

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ONLY COPY AVAILABLE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 75-6079

75-
6079

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY
OF NEW YORK,

Plaintiffs-Appellees,

-against-

LOCAL 638 . . . LOCAL 28 OF THE SHEET METAL WORKERS'
INTERNATIONAL ASSOCIATION, LOCAL 28 JOINT APPRENTICE-
SHIP COMMITTEE . . . SHEET METAL AND AIR-CONDITIONING
CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc.,

Defendants-Appellants.

LOCAL 28,

Third-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Third-Party Defendant.

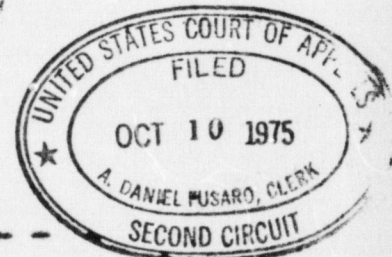
LOCAL 28 JOINT APPRENTICESHIP COMMITTEE,

Fourth-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Fourth-Party Defendant.



On Appeal From The United States District Court
For The Southern District of New York

JOINT APPENDIX - Volume 2 of 4

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Southern District of New York
U. S. Courthouse - Foley Square
New York, New York 10013
791-1966

October 10, 1975

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Sheet Metal Workers International
Association, Local Union No. 28
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Joint Apprenticeship Committee
One Pennsylvania Plaza
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PAGINATION AS IN ORIGINAL COPY

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Schluter-direct

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A 1953.

Q Have you graduated from high school, Mr. Schluter?

A Yes.

Q When did you graduate from high school?

A 1953.

Q Did you apply to the Apprenticeship Program
after you graduated from high school?

A No.

Q When did you apply to the program?

A During my senior year in high school.

Q Was your application to the Apprenticeship
Program sponsored by anybody?

A Yes.

Q By whom was it sponsored?

A My father.

Q Was your father, or did your father have any
relationship with Local Union 28?

A He was a member.

Q Did you take any examination or test prior to
your entry to the Joint Apprenticeship Program?

A No.

Q Did you, or do you have any other relatives
that are members of Local 28?

A Yes.

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Schluter-direct

61

Union 28 if you know?

A I don't know.

Q Is Mr. Farrell still living?

A No.

Q When did he die?

A I don't know exactly. I guess about five years ago.

MR. BOGEN: Mr. Adams, we can stipulate that Mr. Farrell died in February of 1972. I think it was February 11th, your Honor.

MR. ADAMS: Thank you, Mr. Bogen.

Q Was Mr. Farrell the president of Local 28 during all the time that you were an apprentice and member of Local 28?

A Yes.

Q What are the duties of the examining board that you were chairman of, Mr. Schluter?

A To compose, administer and score qualifying examinations for journeymen of Local 28.

MR. ADAMS: I am sorry, would you read that answer back.

(Record read)

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Schluter - direct

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Q Would it be more convenient, Mr. Schluter, to say to compose examinations for applicants for journeyman membership?

A Yes.

Q Prior to your becoming the chairman of the examining board, Mr. Schluter, was there an examining board?

A I don't know.

Q In other words, to your knowledge did you replace anybody as chairman of the examining board?

A No.

Q Were there other members of the examining board that were appointed at the same time you were appointed?

A Yes.

Q Did they replace any other member of the examining board?

A Not to my knowledge.

Q To your knowledge, Mr. Schluter, did the examining board have any -- I will correct that sentence to say did the examining board perform any functions in the four or five years immediately prior to your appointment as chairman of the examining board, to your knowledge?

A Not to my knowledge.

Q Mr. Schluter, other than the duties you have just

1
2 stated of the examining board, are there any other duties
3 of the examining board?

4 A No.

5 Q Was your answer no?

6 A No.

7 Q Were there any specific events that led up to your
8 appointment as chairman of the examining board?

9 A President Farrell told me that it was in response
10 to an arbitration by Theodore Kheel.

11 Q Do you know what the relationship of the arbitra-
12 tion of Mr. Kheel was with your appointment?

13 A I believe Mr. Kheel specified that the applicants
14 were to be tested in accordance with Local 28's procedures.

15 Q Do you know whether Mr. Kheel had ordered that the
16 Local Union 28 take in a certain number of journeymen?

17 MR. BOGEN: I am going to object. Up to this
18 point I didn't mind a few leading questions, but we have
19 gotten to the point where I think Mr. Adams has discarded
20 the factor that he is not a hostile witness and I object to
21 the question as being leading.

22 THE COURT: On the basis of your objection, Mr.
23 Bogen, and on the basis of the information that Mr. Adams
24 has developed since my first ruling, I am now going to
25 consider him to be a hostile witness, since he was chairman

of the examining board of Local 28.

MR. BOGEN: In face of that ruling, I would withdraw my objection, your Honor.

THE COURT: All right.

[Question read.]

A Yes.

Q Do you know how many journeymen Mr. Kheel had ordered the union to take in?

A One hundred.

Q Do you know the year that this award had been made?

A 1968.

Q And that was the year you were appointed chairman of the examining committee, is that correct?

A Yes.

Q Did the examining board administer a journeyman's test to applicants to Local 28 in 1968?

A Yes.

Q What did the test consist of?

A 120 written questions and for successful applicants on the written portion, a practical examination.

Q I take it from your testimony, Mr. Schluter, that successful passage on the written part of the examination was a prerequisite to taking the practical part of the examination?

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2 A Yes.

3 Q Where was the written examination held, Mr.
4 Schluter?

5 A The Statler Hilton Hotel.

6 Q Were there any steps taken by Local Union 28 to
7 communicate the fact or to advertise the fact that a
8 journeyman's examination was to be held in 1968?

9 A Yes.

10 Q When was the journeyman's examination in 1968
11 scheduled? Was it the Spring, the Fall or the summer?

12 A Fall.

13 Q What kind of steps to communicate the existence
14 of this examination were taken by the union, Mr. Schluter?

15 A I was in touch with -- at that time it was
16 Workers Defense League, which is now Recruitment and
17 Training, with a Bill Ross, a John Swann, and I informed
18 them and made applications -- told them where to get the
19 applications for the test.

20 Q Was there any radio advertising?

21 A No.

22 Q Was there any newspaper advertising?

23 A No.

24 [Plaintiffs' Exhibit 61 marked for
25 identification.]

A Yes.

MR. ADAMS: I would like to offer these three documents marked 61, 62 and 63 for identification into evidence.

MR. BOGEN: I have no objection, your Honor.

MR. ROTHBERG: No objection.

THE COURT: All right, they may be received in evidence.

[Plaintiffs' Exhibits 61, 62 and 63 received in evidence.]

MR. ADAMS: May I have these two marked 64 and 65.

[Plaintiffs' Exhibits 64 and 65 marked for identification.]

Q Mr. Schluter, I am going to hand you what has been marked as Plaintiffs' Exhibit 64 for identification and ask you whether you recognize that?

A It is a tally sheet consisting of columns, the registered mail number of the original notification of the applicant for the examination, the test number of his test, the percent he received on the written, the rank he received on the written, the percent on the practical, if he took it, and the rank on the practical, if he took it.

Q Plaintiffs' Exhibit 65 for identification is

1 a series of photographs. There is more than one there. I
2 ask you whether you can identify those photographs.
3

4 A They are photographs of men taking the practical
5 examination in 1968.

6 Q Are those photographs that are Exhibit 65 for
7 identification an accurate representation of the area of
8 the scene that they purport to show?

9 A Yes.

10 MR. ADAMS: We would offer Plaintiffs' Exhibits
11 64 and 65 for identification into evidence.

12 MR. BOGEN: I have no objection, your Honor,
13 with respect to either one of these exhibits. Mr. Adams,
14 with respect to 64, is there a copy of that available?

15 MR. ADAMS: We do not have an extra copy at
16 this point. These were exhibits that were to Mr. Schluter's
17 deposition, and I think at that point these were given to
18 every party, and on that basis we did not make additional
19 copies here at trial, although we certainly can.

20 MR. BOGEN: Since we had submitted the original
21 64 during Mr. Schluter's deposition, I don't have a copy
22 with me, and I would appreciate it if we could have one.

23 THE COURT: All right, 64 and 65 may be received
24 in evidence.

25 [Plaintiffs' Exhibits 64 and 65 received

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Schluter - direct

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evidence.]

Q Mr. Schluter, was there a passing mark for the written test?

A Yes.

Q And what was that passing mark?

A 64%.

Q Were you present when the written examination was administered at the Statler Hilton in 1968?

A Yes.

Q Do you know how many blacks were present to take that written examination?

A I don't recall a number.

Q Do you have any information as to what portion of the number of applicants taking the written examination were black?

A By visual count I estimated 15%.

Q And this was a visual count that was made by you at the Statler Hilton at the time the written examination was being administered?

A Yes.

Q At that time, Mr. Schluter, when you made this visual count, were you able to identify those applicants who were Spanish surnamed or of Hispanic descent?

A No.

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2 Q Did you have any people who spoke Spanish present
3 at the application of the written examination in 1968?

4 A No.

5 Q Was there a version of the test given in the
6 Spanish language?

7 A No.

8 Q Mr. Schluter, do you recall approximately how
9 many people in all took the written examination at the
10 Statler Hilton?

11 A No.

12 Q Would that figure be reflected on Plaintiffs'
13 Exhibit 64 in evidence?

14 A Yes.

15 Q Do you recall how many people passed the written
16 test in 1968 by getting a score of 64 or above?

17 A Not the exact number.

18 Q Can you give me an approximation?

19 MR. BOGEN: I will object to that, your Honor.
20 We have a document in the record. Two things, we can refer
21 to the document; that will be it; or give it to Mr. Schluter
22 to refresh his recollection.

23 THE COURT: I think so. It will make it easier,
24 anyway.

25 MR. ADAMS: I am willing to accept his approxima-

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Schluter - direct

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2 tion because I think it is going to be pretty accurate,
3 to save time of his counting.

4 A I think it was 25 or 26.

5 MR. ADAMS: I am not going to be willing to
6 accept that.

7 THE WITNESS: Okay. It's a long time ago.

8 Q Just to make it clear, Mr. Schluter, you are now
9 counting up the number of people who passed the written
10 part of the examination, is that correct?

11 A 34.

12 Q Do you recall how many people took the practical
13 examination after the written examination, Mr. Schluter?

14 A 34.

15 Q Do you recall how many blacks or other non-whites
16 took the practical examination after the written examination?

17 A No.

18 Q Did there come a time, Mr. Schluter, in 1969,
19 where the Local 28 Examining Board administered another
20 journeyman's test?

21 A Yes.

22 Q And what was the format of that test?

23 A Essentially the same as the 1968 test.

24 Q Between the time of the 1968 examination and the
25 1969 examination, Mr. Schluter, did Local 28, to your

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Schluter - direct

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A Yes.

Q Did the written examination come first?

A Yes, sir.

Q And was a passing score on the written examination
a prerequisite to taking the practical examination?

A Yes.

MR. ADAMS: Four documents.

[Plaintiffs' Exhibits 66, 67, 68 and 69
marked for identification.]

Q Mr. Schluter, I am handing you what has been
marked as Plaintiffs' Exhibit 66 for identification. Can
you identify that?

A That is a blank copy of the written examination
for 1969.

Q And I am handing you what is marked for identifi-
cation as 67. Can you identify that?

A It is a copy of the same test with the answers
filled in.

Q Are those answers filled in by you?

A Yes.

Q And are those answers correct?

A Yes.

Q And do they show all of the possible correct
answers?

1 cmjw 1 Schluter-direct 76
2 Q Mr. Schluter, in your opinion was there any
3 difference in the difficulty in the 1968 written examina-
4 tion and the 1969 written examination?

5 A In 1969 written examination was twenty questions
6 shorter than the 1968 test.

7 Q Is the answer to my question, yes, or no? Or
8 is the answer to my question yes or no there was a
9 difference?

10 A There was a difference.

11 Q Was the 1969 examination less difficult than
12 the 1969?

13 A It was less difficult in the fact that it
14 had less questions on it.

15 Q Was it also less difficult to the extent
16 that there --

17 MR. ADAMS: Strike that question.

18 Q Were there also occasions in the 1969 examina-
19 tion which called for less answers to a question than the
20 1968 examination?

21 A I don't understand the question.

22 Q I don't blame you. I refer you to Question
23 No. 2 on Plaintiff's Exhibit No. 61 and Plaintiff's
24 Exhibit -- and Question No. 1 on Plaintiff's Exhibit 66.

25 (Hanging)

1 cmjw 2 Schluter-direct 77
2 Could you refer to those --

3 A On the 1969 test the examining board only
4 asked for the applicant to identify eight tools found in
5 a journeyman sheetmetal worker's tool box whereas on the
6 1968 test we had asked them to identify ten tools.

7 Q Would you consider the 1969 question of that
8 nature was easier than the 1968 question?

9 A Yes.

10 Q Mr. Schluter, were you ever a teacher in the
11 Joint Apprentice School?

12 A Yes.

13 Q What years were you a teacher?

14 A I taught at night during the 1950s, I taught
15 full-time during the day during the year 1960 and I
16 taught from 1964 through 1971.

17 Q Did you maintain a position, or did you take
18 another position with the Joint Apprenticeship Committee
19 in 1971?

20 A Yes, I became the coordinator of training.

21 Q What are the duties of the coordinator of
22 training?

23 A My responsibilities are the -- to carry out
24 the will of the Joint Apprenticeship Committee.

25 Q Are you familiar with the method used by the

1
2 A Yes.

3 Q Do you know what is the recommended ratio of
4 apprentices to journeymen recommended in those national
5 standards?

6 A No.

7 Q Once an apprentice is assigned does the employer
8 or the contractor make reports to the Joint Apprenticeship
9 School as to his progress?

10 A Not the school. They make reports to me as
11 coordinator on a quarterly basis.

12 Q What information do these reports include?

13 A His attendance on the job and any comments on
14 the back of the attendance form pertaining to his work.

15 Q Would those comments pertain to the quality of
16 his work?

17 A It could be the quality of his work, his attitude;
18 they can be both positive and negative replies.

19 Q Mr. Schluter, prior to the middle of 1970 did
20 Stevens Institute give apprentice applicants examinations
21 twice a year?

22 A Yes.

23 Q And in 1970 was there a change of policy as to the
24 timing of the examinations?

25 A Yes.

Q What was that change?

A The change was made to one examination a year but taking from that same list two groups.

Q Am I correct in stating, Mr. Schluter, -- so the two groups that would be taken from the examination, the one examination would be first one term and then when that term terminated to the second term another term would be appointed, is that correct?

A Yes.

Q And two full classes of apprentices would be appointed from the results of the same test battery?

A Yes.

Q What was the reason for that change?

A The testing of 2,000 became very burdensome and very expensive and they felt by changing the rules whereas a person who was not even out of high school yet could take the examination and if he finished within the first group, would defer his appointment until the second group.

Q When did the system of selecting two separate classes from one test battery begin? Can you identify it by date of the test battery?

A No.

Q Would it have been in October or November of 1970?

A I believe that was the first one.

Q From there on in it had been the policy of the Joint Apprenticeship Committee to appoint two classes from the results of one test battery?

A There were only two tests after that, the 1971 test and the 1973 test.

Q So that the 1971 test was subject to that policy?

A Yes.

Q And the October or November 1970 test was subject to that policy?

A Yes.

Q Has the Joint Apprenticeship School found any difference in the abilities of the members of the first class selected from the test battery as compared with the abilities of members from the second class selected from the test battery?

A We haven't done any surveys to that extent.

Q Have you found any difference in the abilities?

A I haven't looked for differences in abilities.

THE COURT: How are they chosen for one class or another?

THE WITNESS: In strict numerical order from the computer readout.

THE COURT: In other words by rank?

THE WITNESS: Yes, by rank.

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Schluter - direct

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THE COURT: All right.

Q Mr. Schluter, the second class in time was taken from the lower ranking -- from people ranking lower on the test battery results and the first class, is that correct?

A Yes.

THE COURT: It wouldn't necessarily be so if the person was in high school?

THE WITNESS: That is correct.

THE COURT: You could move him over to the second class, defer him?

THE WITNESS: Yes.

Q But is it correct that the bulk of the ones taken in the second class came from lower down on the test results than the first?

A Yes.

Q Mr. Schluter, do you recall having your deposition taken on several different days before a Notary Public in the United States Attorney's Office?

A Yes.

Q Do you recall that prior to your giving your testimony you were given an oath by the Notary Public or the Court Reporter?

A Yes.

MR. ADAMS: Your Honor, at this point we have

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asked for several months now that the people whose depositions were taken by the Government in the long drawn out discovery process, that the depositions will be signed by those people who come from the Joint Apprenticeship Committee local union and we have not had any success in getting these signed but I would ask Mr. Rothberg and Mr. Bogen if they would stipulate that deposition which I have a copy here of were signed by Mr. Schluter or waived signature?

MR. BOGEN: If you identify the deposition -- there were six sessions taken of Mr. Schluter -- if you identify that I don't have any hesitancy of stipulating.

In addition, we called the attention of the United States Attorney's Office in a number of those depositions that they had not been received, and they run pages and pages, and we would be happy to stipulate in court with respect to this and that is what we are prepared to do with that procedure.

MR. ADAMS: I am not sure that that has anything to do with not getting them signed.

MR. BOGEN: What is the page reference?

MR. ADAMS: Page 202.

THE COURT: That was taken on what date?

MR. ADAMS: Robert Schluter taken on December 15,

1972.

Q Mr. Schluter, do you remember this question being asked and your giving this answer:

"Q Has the Joint Apprenticeship Committee found any difference in abilities of members of the class that was taken first and those who were members of the class taken second?

"A You would have to mean the school, not the Joint Apprenticeship Committee.

"Q I would refer to the school, yes.

"A The answer is no."

Do you recall hearing those questions and giving those answers?

A Yes.

Q Was that a correct answer at the time?

A Yes.

Q Mr. Schluter, does the Joint Apprenticeship Committee give awards to apprentices during the time of their apprenticeship?

A Yes.

Q What are these awards based on?

A There are the ends of two semesters and the semesters end around the end of the year and a semester ends around June.

There is a national apprenticeship contest held in the Spring of every year and the awards that we give are based on the participation of apprentices in the Spring semester even though they were not in the national contest competition. In the Fall semester they are based on the marks that they have received on their projects in school for this semester.

Q When you say the marks that they received on their projects, Mr. Schluter, are you referring to the marks recorded on the school record card, that is, the top sheet of Plaintiffs' Exhibit 71?

A Yes.

Q Who marks the test results that are given under the supervision of the national program, referring to the awards and the predicate for the award given in the Spring term?

A We can only send -- I have to change that around because we now have, the past two years, a live national apprentice contest, which we send one representative to a regional contest and we would have the men assemble a certain piece of work and we ship it to Minneapolis to be judged on a nationwide basis. We could only send one to Minneapolis in each year of competition.

So we thereafter had a runoff contest that was

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Schluter - direct

2 judge by the teachers, by myself, or by the JAC and so that
3 the first, second and third were determined by us here in
4 New York City. Then the number one piece was shipped to
5 wherever it had to go for judgment on a national level so
6 we did the judging here.

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2 Q And the people who got first, second and third
3 would get an award from the Joint Apprenticeship Committee
4 in New York whether or not their project or they were sent
5 to the national contest?

6 A Yes.

7 Q Mr. Schluter, has it occurred that an apprentice
8 may graduate into journeyman status from the apprenticeship
9 program in less than four years?

10 A Has it occurred?

11 Q Yes.

12 A Yes.

13 Q Under what circumstances does it occur?

14 A It could be a wholesale skip by the collective
15 bargaining agreement.

16 Q Could you explain that?

17 A If in the settlement of the contract the parties
18 involved decide that they want to skip out the eighth term
19 of apprentices, they would so indicate.

20 Q Therefore the whole term would then be advanced
21 by six months, is that correct?

22 A Yes.

23 Q Would all of the other terms be advanced by six
24 months at the same time?

25 A No.

2 Q Are there any other occasions when a person may
3 graduate from the apprenticeship program and become a
4 journeyman in less than four years?

5 A Not recently. Prior, oh, I would say two, three
6 years ago and prior to that there were times when a contrac-
7 tor would submit a letter to the Joint Apprenticeship
8 Committee stating that he had an outstanding apprentice.
9 He would then be called to come before the trustees of the
10 Apprenticeship Committee and explain why, and the
11 Apprenticeship Committee would then either grant or not
12 grant the skip on the merits of the case.

13 Q And the merits would be as to whether the
14 apprentice was in fact an outstanding worker?

15 A Yes.

16 Q Mr. Schluter, have you been present when the
17 Stevens Institute applicant test battery has been given to
18 applicants to the apprentice program?

19 A Yes.

20 Q Have you been present at all of the tests that
21 have been given for the last four or five years?

22 A Yes.

23 Q How far back would it go that you had been
24 present at the applicant test battery?

25 A I have been at every test.

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Schluter - direct

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Q That have been given by Stevens?

A Yes.

Q Have you had occasion to make any visual survey as to the number of applicants taking the test who were black or non-white?

A Yes.

Q Has this visual survey been taken at each of the tests you were present at?

A Yes.

Q And on the basis of that visual survey, do you have an estimation as to what percentage of the applicants attending the test battery were black or non-white?

A Yes.

Q What is that estimation?

A 15%.

Q You stated before, Mr. Schluter, that you were unable to, at the journeymen's examination, visually identify the Hispanic or Spanish surnamed applicants. Does that same difficulty pertain to your visual identification of the applicants at the apprentice program?

A Yes.

Q So therefore is your visual survey primarily based on the number of blacks that you were able to see at the apprenticeship examination?

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2 A Primarily, yes.

3 Q Am I correct in saying, Mr. Schluter, that this
4 estimate that you have made on your visual survey pertains
5 to all of the examinations that were given by Stevens
6 Institute?

7 A Yes.

8 Q Mr. Schluter, did the Joint Apprenticeship
9 Committee change its rules with regard to the requirement
10 that an applicant have proof of a high school diploma or
11 a certificate of the high school equivalency at the time
12 his application was filed for apprenticeship?

13 I'm sorry, that question is incomprehensible.

14 Did there come a time when the Joint Apprenticeship
15 Committee changed its rules with respect to the requirement
16 that a person have proof of high school education or
17 certificate of equivalency?

18 A Yes.

19 Q And when did that change take place?

20 A For the 1973 test.

21 Q What was the nature of that change?

22 A On the information sheet supplied to the applicant.
23 along with the application, instead of reading that they
24 must submit a copy of their birth certificate, high school
25 diploma or equivalency with the application, they were told

that successful applicants will be required to submit those before indenture.

Q When you say submit those, what are you referring to?

A The high school diploma equivalency and/or birth certificate.

Q What is the birth certificate used for by the Apprenticeship Committee?

A The age requirements.

Q And what are the age requirements?

A Eighteen to 23 at time of indenture, plus number of years in Service up to 30 years.

Now, I am a little bit fuzzy on that point because I think it might have been changed to 25 on the last test. I'm not particularly clear on it.

Q But I take it that for the 1973 test for applicants to apprenticeship, which was given on March 10th, 1973 -- am I correct on the date?

A Yes.

Q Mr. Schluter, I take it for that March 10th, 1973 test, a person was permitted to take the apprenticeship test battery without having submitted proof of a high school education, is that correct?

A Yes.

Apprenticeship Program?

A Slightly over 300.

Q And how many apprentices were there in 1972?

A I don't recall the number.

Q Did it go as high as 560 or 580?

A Yes.

Q And at that time when there were 560 or 580 apprentices, was the school open for night journeymen classes?

A Yes.

Q And in 1972, Mr. Schluter, how many teachers were there at the school?

A Three full time day teachers.

Q And how many teachers are there now?

A Two full time teachers and myself, part time.

Q Was one of the teachers fired? Was one of the teachers let go?

A Yes.

Q What was the reason for his being let go?

A Because we had cut back on the number of apprentices attending the classes.

Q And did that teacher teach welding?

A Yes.

Q Who is teaching welding now?

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2 A Welding has been taught to all the present
3 apprentices along with the eighth period apprentices who
4 were graduated in June. They have already had 80 hours of
5 welding. That is the requirement. The need for a welding
6 teacher will be in September when the new class convenes,
7 because at that time the eighth termers will not have had
8 welding, but prior to letting the welding teacher go,
9 we backed up on welding with the number of classes that would
10 allow us to do that.

11 Q When you say new class being convened in September,
12 Mr. Schluter, to what are you referring?

13 A The new class term starting.

14 Q But there is nobody at the school now teaching
15 welding, is that correct?

16 A That's correct.

17 Q Is that an important aspect of sheetmetal work?

18 A It is very important, but nobody is missing it
19 right now.

20 Q Mr. Schluter, I take it that there has been some
21 unemployment among the apprentices in recent months, is that
22 correct?

23 A Yes.

24 Q Now, do apprentices have an obligation to pay a
25 certain amount of dues each term?

balancing of air handling systems.

Q Is testing and balancing taught or learned during a person's apprenticeship?

A It is now. I have to say that because I have just this year sent one of my instructors to the University of Colorado to take a course in teaching testing and balancing of air handling systems and it is now incorporated into our curriculum.

Q But it is an important part of the sheetmetal trade, is that correct?

A Yes.

Q Mr. Schluter, did you have occasion in May of 1973 to give an examination to apprentices of the Local 28 apprenticeship program which apprentices, those apprentices being the ones that had been admitted in the middle or the summer of 1969?

A Yes.

Q Did you know what the purpose of this test was?

A Yes.

Q What was the purpose of the test ?

A It was to assist Stevens Institute with a study they were making.

Q Did the test consist of a written test?

A Yes.

Q I am now showing you what has been marked as Plaintiffs' Exhibit 73 for identification, I ask you whether you can recognize and can identify that document?

A Yes, that is that test.

Q Is that the written test that was given to the 1969 apprentice class in May of 1973?

A Yes.

Q Was the written test based on the journeyman's examinations which you had given in 1968 and 1969?

A Partially.

Q Was it modified somewhat from those examinations?

A Some information was drawn from those examinations.

Q Did you also give a practical test at the same time for the same apprentices?

A Yes.

Q And was that part of the same program for Stevens Institute?

A Yes.

Q Who developed the practical test, Mr. Schluter?

A I did.

Q I am handing to you now what has been marked Plaintiffs' Exhibit 74 for identification and ask whether you can recognize that and identify it?

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A That is the sketch of the piece that I used for the practical examination.

Q 74 for identification is a sketch of the so-called hands on project that was used for the practical part of the examination?

A Yes.

1 ARjw 1 Schluter-direct 115
2 MR. ADAMS: I offer Plaintiff's Exhibits
3 73 and 74 for identification in evidence. I believe
4 counsel have seen them.

5 MR. BOGEN: No objection.

6 MR. ROTHBERG: No objection.

7 THE COURT: All right, received.

8 (Plaintiff's Exhibits 73 and 74 received
9 in evidence)

10 Q Did you consult with anybody about the
11 development of these tests, Mr. Schluter?

12 A No.

13 Q What was the practical test? What was this
14 piece that the apprentices were asked to make?

15 A It was a four-way transition.

16 Q Duct?

17 A Duct.

18 Q Maybe you can explain what a four-way transition
19 duct is?

20 A It is a piece of duct work that is changing
21 shape on both sides and either raising or lowering,
22 depending upon the situation.

23 Q Mr. Schluter, what was the practical test
24 designed to test?
25

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Schluter-direct

2 A Designed to test his ability to lay out, form
3 up. fabricate and weld sheetmetal.

4 Q Was the practical test originally designed
5 so that it did not include welding?

6 A I don't recall.

7 Q Was the practical test designed to test what
8 an apprentice had learned in the four years as apprentice?

9 A It would be difficult on one test.

10 Q On this practical test, Mr. Schluter, was the
11 apprentice called upon to read any building plans?

12 A No.

13 Q Was he called upon to do any sketching or
14 drafting?

15 A No.

16 Q Was he called upon to do any installation
17 work?

18 A No.

19 Q Was he called upon to do anything with install-
20 ing louvers or dampers?

21 A No.

22 Q Or vanes?

23 A No.

24 Q Was he required, in order to do this practical
25 hands on test, to use any power tools?

1 arjw 3 Schluter-direct

2 A He wasn't required, no.

3 Q Could the project be done without the use of
4 power tools?

5 A Yes.

6 Q Did the hands on project, which is described
7 in Exhibit 74, include any testing or balancing?

8 A No.

9 Q Mr. Schluter, I think you testified that you
10 have been in the sheetmetal trade, including your apprentice-
11 ship, for over twenty years, is that correct?

12 A Yes.

13 Q Has there been any major change in sheetmetal
14 work during this time, any change in the type of work
15 done by the industry ?

16 A Yes.

17 Q What has been the change, the major change?

18 A What you call the major change, the industry
19 changes every single day. Probably the innovation that
20 has come has been high pressure duct work as opposed to
21 low pressure duct work.

22 Q That would be the most major change that comes
23 to your mind in the last twenty years?

24 A Since I have been in the industry, yes.

25 Q Mr. Schluter, were you a teacher at the Joint

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2 Apprenticeship School at the time when through a Court
3 order the Joint Apprenticeship Committee began to administer
4 a set of test batteries to applicants in order to administer
5 the Apprenticeship Program?

6 A Yes.

7 Q Were you a member of Local 28 at that time?

8 A Yes.

9 Q Do you recall whether Local 28 ever took
10 steps to train people for the apprenticeship qualifying
11 examination given by Stevens Institute?

12 A Yes.

13 Q Do you recall when those steps were taken?

14 A Prior to the tests.

15 Q Do you recall about what year?

16 A Late 1960s I would say, or 1967, 1968, 1969.

17 Q Could it have been as early as 1966?

18 A Probably, yes, sir.

19 Q What steps were taken by Local 28?

20 A Local 28 tried to familiarize the applicants
21 from Local 28 people with exactly what kind of a test
22 battery was to be given.

23 Q When you say applicants from Local 28 people,
24 what do you mean?

25 A People who were friends or relatives of Local 28

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2 members.

3 Q Who was in charge of familiarizing these
4 people?

5 A I was.

6 Q Do you recall who requested you to undertake
7 this job?

8 A No.

9 Q Was it a member of Local 28?

10 A Somebody in the administration of Local 28 at
11 that time.

12 Q What did you do in following out this request,
13 Mr. Schluter?

14 A I simply purchased some of the Arco Publications
15 that dealt with mechanical reasoning and spatial relation
16 tests and told the applicants to familiarize themselves
17 with that type of an examination.

18 Q Did you hold classes?

19 A Yes.

20 Q How many classes did you hold?

21 A A few classes prior to each test. It varied
22 from test to test.

23 Q When this first began, this procedure began,
24 Mr. Schluter, that you just testified to, who attended?

25 A A few applicants.

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2 Q These were applicants that were either
3 relatives or friends of members of Local 28?

4 A Yes.

5 Q Was this matter of these classes discussed
6 at the Local 28 membership meetings?

7 A Yes.

8 Q Were you paid for the work that you did in
9 this project?

10 A For some of them, yes.

11 Q By whom were you employed?

12 A Local Union 28.

13 Q Where did these classes take place?

14 A The original sessions in the Local 28 Apprentice-
15 ship School and the last one in the Marc Ballroom.

16 Q When was the last one?

17 A Prior to the 1973 test.

18 Q How many people attended the sessions that
19 you held in the Marc Ballroom prior to the 1973 test?

20 A A couple of hundred people.

21 Q Who paid for the Marc Ballroom?

22 A Local 28.

23 Q Local 28 paid the Joint Apprenticeship Committee
24 for the use of their facilities?

25 A No.

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2 Q How did the people who came to the sessions
3 know of their existence?

4 A They were told by either members of Local
5 28 or truck drivers or laborers or people on the job.

6 Q Mr. Schluter, are you present at the meetings
7 of the Joint Apprenticeship Committee ?

8 A Yes.

9 Q Do you take the minutes of those meetings?

10 A Yes.

11 Q How long have you been taking the minutes?

12 A A few years.

13 Q Is it your duty or practice at these Joint
14 Apprenticeship Committee meetings to report on the number
15 of apprentices who are unemployed?

16 A Yes.

17 Q Whom do you report to?

18 A The Committee.

19 Q Are these reports reflected in the minutes
20 of the Joint Apprenticeship Committee ?

21 A Most of them.

22 Q Are the minutes an accurate reflection of the
23 report that you give?

24 A Yes.

25 MR. ADAMS: Your Honor, at this time, we

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deposition yesterday and we decided to defer. I object to the questions addressed to Mr. O'Reilly.

THE COURT: On the ground that he is not --

MR. BOGEN: He is not the person who would know. He might be guessing or speculating.

THE COURT: I will let him answer unless he says he doesn't know.

MR. BOGEN: Thank you, your Honor.

THE COURT: Read the question.

[Question read.]

A I would say roughly some years ago. I don't know the exact date or year.

Q Mr. O'Reilly, was the subject of organizing the blowpipe workers discussed at general meetings of Local 28?

A Yes, it was discussed at meetings of Local 28.

Q What was the circumstances that gave rise to those discussions?

A I could not remember, it is so long ago, to tell you the truth.

Q Would it have been the circumstances that there were efforts to organize the blowpipe workers?

A That was the circumstance I presume.

Q Was that the reason, the fact that gave rise to the discussion with respect to the membership meetings?

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2 A Frankly I did not attend all the meetings. I
3 would only be guessing at it.

4 Q Did the time come when Local 28 decided not to
5 organize the blowpipe workers in New York City?

6 A Yes, that was the business of the union, yes.
7 They did not entertain organizing the blowpipe at that
8 time.

9 Q What was the reason they did not entertain
10 organizing the blowpipe workers?

11 A As I said, I am not aware of all the meetings
12 that transpired except it wasn't consummated that they take
13 the Blowpipe Division into the union. The details I am
14 not familiar with.

15 Q Do you know of any reason that was stated at
16 any of the membership meetings you did attend as to why
17 Local 28 would not organize the blowpipe workers?

18 A I think the main argument was the differential
19 in rates.

20 Q What do you mean by differential rates?

21 A Different wages or scales of wages for the
22 workers.

23 Q Would you elaborate on that as to what was
24 different from whom?

25 A That the building construction rate was a higher

rate of pay and the blowpipe was a lesser rate.

Q Was the racial makeup of the blowpipe workers in New York City ever discussed at Local 28 meetings?

A To my knowledge, never.

Q Referring back to Exhibit No. 80, Mr. O'Reilly, the shop code translation refers to D, door shops. What type of work is done in door shops?

A Primarily the installation of doors where they require fireproofing and lead-coated and primarily that is the work of our men in the shop. They have carpenters in the shop, the coating of the doors and the lining and the making of the fireproof doors are primarily done by our people.

Q Is this strictly in-shop type of work?

A Basically it is. There is the installation of doors in the field.

Q Do the men in this door shop area occasionally move to another type of shop within the jurisdiction and with collective bargaining agreements with Local 28?

A The area of the door shops is very limited and a very small amount of men in that part of the industry.

Q Do men in that industry occasionally change to another portion of the sheetmetal industry?

A To my knowledge I am not sure.

Q I want to refer to Page 83 of Mr. O'Reilly's deposition.

Mr. O'Reilly, again I am referring to your deposition taken October 10 and 11, I believe, 1972. Do you recall being asked this question and giving this answer:

"Q Do they move in and out of that business or do they as a normal practice work in the sheetmetal door business?

"A Basically that has been a longstanding part of our business and these men do basically stay there. There is movement but not that much movement."

Was that a correct answer that you gave at that time ?

A To my knowledge.

Q Now, on the shop code translation you have the word Kalamein. Am I pronouncing it correctly?

A Kalamein.

Q What does Kalamein mean?

A That is the lining of the door with metal. Kalamein to my knowledge. I never worked in that part of the industry myself.

Q Do people in the Kalamein Division of Local 28 receive the same rates of pay as other journeymen?

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MR. BOGEN: I object, it hasn't been established that there is a Kalamein Division.

THE COURT: Sustained.

Q Is there a Kalamein section in Local 28?

A It is not a section, that is the men that work for those door shops during the Kalamein.

Q Do the men who work in door shops receive the same rates of pay as other men in Local 28?

A It has a 25¢ differential, that is all, less.

Q Per hour?

A Per hour, yes.

Q Mr. O'Reilly, what are the ways that a person can become a journeyman member of Local 28? By that I mean what are the various routes to journeyman membership?

A The main route primarily is becoming an apprentice under the Joint Apprentice Program which is the route I took.

Also there is a route of the journeyman test that we conducted in Local 28 on two occasions that admitted men in Local 28.

The other route would be a transfer from other local unions into Local 28. Those primarily are the three routes of admission and the fourth one would be the organization of companies under organizational plans.

Those four routes are primarily it.

Q What is the procedure of Local 28, Mr. O'Reilly, respecting transfers to Local 28 by members of other sheetmetal locals?

A Primarily any other members of another local union in the International Association who request a transfer into Local 28 is normally not entertained, not approved by our Executive Board.

If he was formerly a member of Local Union 28 and requests retransferring back to Local 28 after he had transferred out, normally that type of transfer is accepted.

Q Mr. O'Reilly, who or what body of Local 28 made the decision that as a general practice transfers would not be accepted into Local 28?

A Well, transfer requests or requests for transfers appear before the Executive Board and are discussed by the Executive Board and ruled on by the Executive Board.

Q Mr. O'Reilly, is the rule of not accepting transfers, the rule which states that Local 28 does not accept transfers as a general matter, is that written down in any of the rules or regulations of Local 28 anywhere?

A No, it is not written down.

Q Are you aware of the rules and regulations set down by the constitution of the International Association

of the Sheetmetal Workers?

A Yes.

Q Do they vary with the policy or rule of Local 28 with respect to transfers?

A Yes, they have a section of our constitution that governs transfers of men from one local union to another.

Q Does the policy of Local 28 as you have just described it differ from the rules and regulations of the International Association as set forth in the constitution?

A The transfer policy of Local 28 lives up to it according to our constitution and when they don't they are overruled by the International Association.

Q Does Local 28 agree or except with the rules of the International Association with respect to transfers?

A No. On many occasions we do not agree and, as I said before, we are overruled by our International Association.

Q Are you overruled on every occasion that you do not accept a transfer?

A Not on every occasion but every occasion where the individual that is aggrieved appeals to the International and the International upholds his appeal.

Q Does a person who is applying for a transfer to Local 28 come before the Executive Board for approval or

disapproval?

A Yes. All requests for transfers appear at one of our regularly scheduled Executive Board meetings and appears before the membership of the Executive Board and requests a transfer in person.

Q I believe Mr. O'Reilly stated that there was an exception to the general policy of Local 28 respecting transfers and that exception involved former members of Local 28.

Is that a fair statement of the exception and general policy?

A When I say former members, I basically mean men who were Local 28 members that leave Local 28 on transfer to another local union or there are occasions of former members that take withdrawal cards and return and that is not a transfer, it is a reinstatement. But you are talking about transfers now.

On the transfer basis it is not former members, it is members of the International Association who transfer to another local that might at some time want to retransfer back to their home local.

Q But the exception applies only to people who were at one time a member of Local Union 28?

A Correct.

Q When did this rule applying to former members of Local 28 come into effect?

A The rule isn't -- it is a tradition, a courtesy rule that the home local of any apprentice that graduates and becomes a journeyman and we render him that courtesy of reinstatement in his home local at any time that he wants to return from another local union.

Q Has the rule been in effect for over ten years?

A I would say more than that, yes.

Q Does this rule respecting former members of Local 28 and their transfers apply to members of sheetmetal locals other than 28 located in New York City?

A No, it is basically the building trades and construction trade local unions. That is the courtesy of Local 28 and the building and construction trade local union and the transfer policy that we have adopted in Local 28 pertains primarily to the building and construction trade local unions.

Q Are you saying that the sheetmetal unions in New York City are the building trade unions?

A In New York City there is only one building trade construction union and that is Local 28.

Q Are you or were you aware at one time, Mr. O'Reilly, of the existence of Local 401?

1 surnamed person?

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3 MR. BOGEN: I object to it, your Honor. It
4 has not been established that such a group or entity
5 existed at any time.

6 THE COURT: Can you establish that, Mr. Adams?

7 MR. ADAMS: We can. We haven't established it
8 at this point but I will certainly make an offer.

9 THE COURT: I suggest that you lay a foundation.
10 Ask him whether he knows whether any of those companies
11 existed at that time.

12 MR. ADAMS: We can do that but I don't believe
13 that it is necessary to be able to ask this question.

14 THE COURT: I think it is. You are asking him
15 as a hostile witness. You can ask him anything but I
16 don't know whether any shop existed or how many.

17 Q Mr. O'Reilly, do you have knowledge whether any
18 shops that were owned or principals of shops, sheetmetal
19 shops, was a black or Hispanic existing before 1973?

20 A No, to my knowledge I am not sure of any.

21 Q You don't know of any?

22 A I don't know of any.

23 Q Have you ever heard of any?

24 A No. To my knowledge, before 1973? No, to my
25 knowledge.

2 Q Do you have knowledge of the race or national
3 origin of the owner or principals of non-union shops in
4 New York City?

5 A No. I have no knowledge of any of that informa-
6 tion.

7 MR. ADAMS: I think that I laid a foundation
8 so that we could ask that question since certainly the
9 foundation is there that there are none.

10 MR. BOGEN: It is interesting that reasonable
11 people can have diametrically opposite views. I think
12 that the foundation has been laid to indicate any further
13 question would be highly improper.

14 THE COURT: I agree. I am sustaining your
15 objection to any further questioning.

16 MR. BOGEN: Thank you, your Honor.

17 Q What is the procedure for organizing non-union
18 shops, Mr. O'Reilly?

19 A Primarily the first proceeding is the business
20 agent comes across a company that is doing work and is a
21 non-union company; and that the agent in due process of
22 trying to get work turned over to be done union, the
23 company requests they would like to be organized as a union
24 shop.

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Q Once that request is made, what happens?

A Usually the business agent reviews their operation and inspects their shop and then inspects their entire organization, and discusses with the business manager the request of this particular company to be organized as a Local 28 shop.

Q Who is the business manager of Local 28?

A Presently it is Mr. Edward Stack, the business manager.

Q Is the president of Local 28, or has the president of Local 28 also been the business manager of Local 28, to your knowledge?

A Yes. The president of Local 28 has always, and past president, been the business manager of Local 28.

Q Does Local 28, when it organizes a shop, take in all the sheetmetal workers into its membership that are working at the shop at the time of organization?

A Not on all occasions. It depends on the entire circumstances of the company, the volume of work, and the make up of the entire organization, and the stability of the company.

Q Which of those factors that you have named would move Local 28 toward the decision of not taking a person who was working in a newly organized sheetmetal

2 job?

3 A The primary factor is the -- organizing the
4 companies basically has always been small companies, but
5 where there is a large company, it would have to require
6 that the company be an established company, with long
7 time and a very solvent operation, that he could sustain
8 a large organization. We have never had the problem of
9 a large organization trying to be organized.

10 Q When a sheetmetal shop is organized by Local
11 28, do the workers, the sheetmetal workers in that shop,
12 appear before the executive board?

13 A Yes, after all the preliminary surveys are
14 done and the business manager consults with the business
15 agent in the review of the organization of the company,
16 and it's established that the company could be organized,
17 the business agent usually brings the organization of the
18 company before the executive board.

19 Q When you say the organization of the company,
20 do you mean the sheetmetal workers in that company?

21 MR. BOGEN: Excuse me, your Honcr, I didn't
22 object to one or two questions. I think it was established
23 in the prior question or two, Mr. O'Reilly -- withdrawn --
24 that the business manager is in charge of organization,
25 and it is his responsibility with the business agent.

2 Mr. O'Reilly, being the recording secretary,
3 can describe what he does. Both Mr. Stack and several of
4 the business agents have been indicated as witnesses.
5 Mr. Stack is here and will be called.

6 As a consequence I'm objecting to any further
7 questions with respect to the organization. This at best
8 is a second-hand opinion of an officer, though he's an
9 officer, who was not involved with the organization, and
10 the officer who is in charge of it, the prime officer,
11 will be called as a witness, he's available.

12 In addition to that, the business agents who
13 were involved, part of their job is organization; it's set
14 forth in the discovery procedure. Consequently, I think
15 it's improper to pursue it with Mr. O'Reilly.

16 THE COURT: I think Mr. O'Reilly can answer
17 the question that has been put, if he will listen to the
18 question. And that is, whether the men who are in the
19 shop at the time that it's organized have to appear before
20 the executive board; in other words, the people who are
21 going to become members of 28, do they have to appear before
22 the executive board?

23 THE WITNESS: Yes. After all, as I stated
24 before, after the preliminary investigation is done by
25 business --

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2 THE COURT: Mr. O'Reilly, can I tell you,
3 you can answer that question yes or no.

4 THE WITNESS: Yes.

5 THE COURT: All right.

6 Q Has Local 28, to your knowledge, Mr. O'Reilly,
7 organized a shop where the sheetmetal workers who worked
8 in that shop were not permitted to become members of
9 Local 28?

10 A No.

11 Q Are you saying, Mr. O'Reilly, that all the
12 people who worked in all the shops organized by Local 28,
13 all the people who worked as sheetmetal workers became
14 members of Local 28?

15 A Would you rephrase that question?

16 THE COURT: Let's read it back.

17 (Question read)

18 A No. In the organization of shops, if an
19 owner of a company -- once they establish a business and
20 he has no working people in his organization -- it's not
21 organizing a company. The company starts in business,
22 and the members that work for him are already 28, Local
23 28 members.

24 The other case of the question that you are
25 asking about, organize, we organize all the men with the

2 company. When the final organization is done, and it's
3 presented by the business manager and the business agent
4 to the executive board, normally all the men who are
5 with the company are organized with the company.

6 Q Mr. O'Reilly, have there been occasions where
7 Local 28 has offered to organize a non-union sheetmetal
8 shop which has or had sheetmetal workers in it, but that
9 that offer of organization did not include membership in
10 Local 28 for those sheetmetal workers.

11 MR. BOGEN: If your Honor please, "If you
12 know." I don't understand it. The question is objection-
13 able as to form to begin with, and certainly with respect
14 to if he knows.

15 MR. ADAMS: Your Honor, I don't believe that
16 Mr. O'Reilly has to be constantly reminded as to what his
17 knowledge is by Mr. Bogen. Mr. O'Reilly knows what
18 he knows.

19 THE COURT: I'm not going to have any fight
20 on that score. Please, Mr. Bogen, sit down. Answer the
21 question Mr. O'Reilly.

22 A To my knowledge -- I am not made aware of all
23 the organizational efforts that are done in Local 28.
24 It usually starts with the business agent and the business
25 manager before it is brought to my attention.

2 Q But you do sit as a member of the executive
3 board where the issue of organization of a shop is dis-
4 cussed?

5 A Right, the final issue.

6 THE COURT: I think at this point, Mr. Adams,
7 we'll take a short recess.

8 (Recess)

9 THE COURT: You are still under oath, Mr.
10 O'Reilly.

11 THE WITNESS: Yes.

12 THE COURT: Mr. Adams.

13 BY MR. ADAMS:

14 Q Mr. O'Reilly, to your knowledge, do any of the
15 non-organized sheetmetal works, or are there any non-
16 organized sheetmetal shops in New York City?

17 A To my knowledge, there are.

18 Q To your knowledge, do any of those non-
19 organized sheetmetal shops employ non-whites as sheetmetal
20 workers?

21 A No, I have no knowledge of the make up of any
22 of the companies.

23 Q Mr. O'Reilly, do you recall verifying answers
24 to interrogatories proposed by the United States in this
25 case on behalf of Local 28?

Q And that your predecessor as recording secretary of Local Union 28 held the same position with the Joint Apprenticeship Committee?

A Correct.

Q And who was your predecessor?

A John Mulhearn.

Q And you became recording secretary in 1968, is that correct?

A Correct.

Q Where were the applications for the Joint Apprenticeship Program processed in the year 1968?

A In 1968 they were processed through the office of Local 28, the application.

Q Who processed them through the office of Local 28?

A The staff of Local Union 28.

Q Who was in charge of the processing?

A I was in direct supervision of the processing, under my office manager and his staff.

Q How were the applications processed?

Q There was always a cut-off date on the return of the application, and it had to be returned by a specific date which was noted on the application, and as these were being either mailed in or hand delivered or turned into the

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these documents myself. I am interested in the interests of expediting it, I am interested in having them introduced if in fact they are authentic. I don't know at this point and stage. Perhaps if I could confer with Mr. Adams at this stage we could overcome this.

MR. ADAMS: I thought Mr. Bogen understood where they came from. He expressed no surprise this morning. I will be glad to tell him. Do you want to do it off the record?

THE COURT: Let's go off the record.

(Discussion off the record)

MR. BOGEN: If your Honor please, at this time I'm going to withdraw what might appear to have been an objection, suspend or terminate any voir dire, and have no objection to the introduction of these documents. I wasn't clear where they came from.

Mr. Adams has cleared it up in an off the record discussion.

THE COURT: All right. They will be received.

(Plaintiff's Exhibits 83, 84, 85, 86 and 87

received in evidence)

BY MR. ADAMS:

Q Mr. O'Reilly, I refer to Plaintiff's Exhibit 87 in evidence, which states it's the finding of the

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Committee to reject your application due to your character.

What does the reference to character mean,
if you know?

A The character would be from the apprenticeship application, asking for the criminal record of any person applying for the apprenticeship.

Q What does the reference to Committee mean?

A The Joint Apprenticeship Committee.

Q Mr. O'Reilly, were there kept files in the office of Local 28 on each applicant to the Local 28 Joint Apprenticeship Program?

A Those that took the tests or the members of the Apprenticeship program.

Q Those who applied for the program?

A Those that applied, yes, we kept an individual record of every applicant that was accepted to take the apprentice test.

Q How was that record kept? Was it kept in a manila file, for instance?

A Everyone had a manila folder and they were kept in trans-files.

Q Was the person's name, the applicant's name on his file folder?

A Yes, every applicant had his own file folder

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for identification that I just handed you?

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A Gregory Harmone.

Q What does NG stand for?

A I assume it's no good, the application, some-
thing wrong with the application.

Q Is that exhibit for identification a xerox
copy of one of the folders kept?

A I'm assuming it is.

MR. ADAMS: We would offer this into evidence.

MR. BOGEN: No objection, your Honor.

THE COURT: All right, it will be received.

(Plaintiff's Exhibit 88 received in
evidence)

Q Mr. O'Reilly, during the time that the Joint
Apprenticeship applicant's applications were processed in
the office of Local 28 was proof of a high school diploma
or a certificate of high school equivalency required
before a person could take the applicant's examination?

A When I assumed the office in 1968, I think
there was one year, I'm not sure, I think there was one
year left where only three years was required, then the
full four year high school diploma or equivalency was
required. I'm not sure of the date where it turned over.

Q Did there come a time when an applicant did

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2 not have to provide proof that he had received a high
3 school diploma before taking the examination?

4 A Yes. When we changed over to the new applica-
5 tion, the Apprenticeship Committee, to avoid lengthy
6 bookkeeping and collecting, required and notified appli-
7 cants that if they were accepted they would be required
8 at that time to produce it.

9 Q And did that occur just prior to the giving
10 of the March 10th, 1973 test?

11 A I recollect that the new procedure started
12 previous to the last test.

13 Q And prior to the last test in 1973, was
14 proof of a high school education and/or a certificate
15 of equivalency required before a person could take the
16 examination?

17 A Yes. we did require it before.

18 Q Mr. O'Reilly, during the period 1967 to 1972,
19 did Local 28 receive requests from the sheetmetal con-
20 tractors for additional sheetmetal workers?

21 A What were the dates there?

22 Q 1967 to '72.

23 A Yes, there were requests for men.

24 Q And did these requests exceed the number of
25 Local 28 journeymen sheetmetal workers that were available?

2 A Yes, on some occasions.

3 Q Did Local 28 seek to obtain additional sheet-
4 metal workers from other parts of the country.

5 MR. BOGEN: Objection.

6 Withdrawn, your Honor. Withdrawn.

7 THE COURT: All right, you may answer.

8 THE WITNESS: Yes, under the manpower committee
9 we acquired additional manpower.

10 Q Did you participate in these efforts to get
11 additional sheetmetal workers from other parts of the
12 country?

13 A Yes, I was on the manpower committee.

14 Q What were the procedures for permitting these
15 men to work in Local 28's jurisdiction?

16 A Local 28 is a member of an international
17 association having many affiliates around it locally and
18 nearby in the suburban area, and we solicited men
19 from these areas that had high unemployment.

20 Q Would these men be given permits to work in
21 Local 28's jurisdiction?

22 A No, they were not permits, no.

23 Q Were they given an identification card?

24 A Yes. Any member of another local working for
25 one of our contractors were given an identification slip.

2 Q And did that identification card permit that
3 man to work in Local 28's jurisdiction as a sheetmetal
4 worker?

5 MR. BOGEN: Objection with respect to the
6 conclusion of "permit".

7 THE COURT: Overruled. Was that the effect
8 of this identification slip?

9 THE WITNESS: Yes, it was the 30-day slip of
10 identification to allow a sister local member to work.

11 Q When these men came in from other areas of
12 the country, were they given any test by Local 28 prior
13 to the time of taking a position with an employer?

14 A No.

15 Q Were they assigned to any particular contractor?

16 A Yes.

17 Q Who assigned them?

18 A Well, the manpower committee did.

19 Q Did there come a time when identification cards
20 were given to members of other construction local unions
21 besides sheetmetal unions?

22 A Yes, on some occasions.

23 Q And what was the location of these other con-
24 struction locals?

25 A New York City locals.

1 Q Were these men given any tests before they were
2
3 assigned to work?

4 A No.

5 Q Did these men come from the carpenter's local?

6 A No, most of them came from boilermakers or
7 ironworkers.

8 Q What was the wage paid to these men carrying
9 identification cards?

10 A The standard journeymen's wage at that time.

11 Q When you refer to journeymen's wage you refer
12 to the journeymen's wage for Local 28?

13 A Yes.

14 Q Mr. O'Reilly, in 1967 did there arise an
15 occasion where there was a demand for sheetmetal manpower
16 that Local 28 requested its pensioners to come back in-
17 to the work force?

18 A 1967 to my knowledge there was very severe
19 unemployment in Local Union 28.

20 Q In 1967, to your knowledge, did Local 28
21 ever request Local 28 members on pension to come back
22 in to the work force?

23 A Not in 1967, no.

24 Q In 1967, Mr. O'Reilly, did president Farrell
25 order all Local 28 members who were working outside the

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geographical jurisdiction back into New York?

A In 1967? To my knowledge at that time, I was not an officer, to my knowledge there was severe unemployment in our industry at that time.

Q Did Mr. Farrell ever order all Local 28 members back into the New York City for work with New York City contractors?

A Not to my knowledge. I was not an officer at that time.

Q At any time were Local 28 members on pension requested to come back?

A No, we never requested pensioners to return to work.

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2 Q Mr. O'Reilly, I am handing you a document
3 numbered 133 which comes from Exhibit 51 in evidence.
4 Could you identify that?

5 A Yes, it looks like a photocopy of our minute
6 record book of Local Union 28. It is longhand, it is not
7 mine. I am assuming it is Secretary Mulhearn's longhand.

8 Q Can you read the date on the top, please, on the
9 right-hand side of the page?

10 A July 20, 1967.

11 Q I am referring to a place about three-quarters
12 of the way down and ask you to read the sentence that
13 starts out, "The Executive Board."

14 MR. BOGEN: Unfortunately we do not have a copy
15 of that document. I don't want to delay but if they have
16 one I would like a chance to follow along. I think we
17 are entitled to know what is being offered to refresh his
18 recollection.

19 MR. ADAMS: I am afraid you are right and I did
20 not expect this to come up. We do not have another copy.
21 When Mr. O'Reilly has finished reading it I will hand it
22 to you before I ask any questions.

23 MR. BOGEN: Fine.

24 Q Have you finished reading the sentence that I
25 referred you to, Mr. O'Reilly?

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2 A Yes.

3 Q Mr. O'Reilly, I hand you Page 133 which I think
4 you identified as being from the minute book. Does that
5 refresh your recollection with respect to the issue of
6 calling back pensioners to work?

7 A Basically it does reflect -- at that time we
8 were very slow. We were coming out of a very slow period,
9 it might have been getting busy at that time.

10 Q I just asked you whether it refreshed your
11 recollection and I will ask you questions with respect to
12 what the circumstances were.

13 A It refreshes my memory.

14 THE COURT: Why not read the document into
15 evidence, Mr. Adams and let us hear what it says. It is
16 in evidence but let us read this portion which is
17 significant. Your refreshing his recollection would be
18 subject to the same objection, does it refresh his
19 recollection and he says no.

20 MR. ADAMS: I believe he testified it did refresh
21 his recollection.

22 THE COURT: No, he didn't, I am sorry.

23 MR. ADAMS: "The Executive Board recommends
24 that officers of Local 28 at their discretion in order to
25 meet the manpower requirements of our employers recalled

1 pensioners on doctors' certifications to be able to work
2 in the industry and Local 28 will waive the disqualification
3 provision penalty on Page 19, Section 11('however in the
4 event of emergency in the industry the Board of Trustees
5 may suspend the six months' disqualification provision')".

6
7 THE COURT: All right. So that in 1967 they
8 called back the pensioners. He was not an officer, he
9 was a member.

10 If you say, do you recollect as a member now
11 that -- but you got him here as an officer. I think you
12 have to make that distinction.

13 MR. ADAMS: All right.

14 Q Do you recollect as a member, Mr. O'Reilly, the
15 recall of pensioners or the discussion of the recall of
16 pensioners?

17 A I recollect but in 1967 -- it comes to me now --
18 it was not busy enough to recall them and that we left to
19 the discretion of the officers. It never took place in
20 1967.

21 MF. BOGEN: At this time I would like a comment
22 about having heard the minutes being read by Mr. Adams
23 and indicating that it was a fact. I just want to call
24 your attention it is a recommendation to do something.

25 THE COURT: It is an authorization.

2 MR. BOGEN: Exactly. It cannot be stated as a
3 fact it was completed.

4 THE COURT: All right, I understand that.

5 MR. BOGEN: I have no objection to Mr. Adams
6 reading another portion of the document in evidence.

7 MR. ADAMS: Can we stipulate the date of this
8 appearing on the page prior to that, August 3, 1967?

9 MR. BOGEN: Yes, again that is part of the
10 document. I have no objection to having that read from
11 Page 135, "Brother Farrell contacted all locals where our
12 men were working and ordered them all back three to four
13 weeks ago."

14 Read the next sentence just before that:

15 "Brother Pasquinucci, Sr. said we should not
16 worry about our employers, let our men work overtime and
17 call all our men back from other locals and advise them
18 of benefits they are losing."

19 If your Honor please, this time in terms of Mr.
20 Adams reading anything in the record I have no objection
21 but I would like to call to your attention that it is a
22 definite statement and it is difficult in dealing with a
23 series of minutes which were introduced. You have a
24 "brother" in a meeting as a member of the local making a
25 statement and then Mr. Adams is now reading it into the

record so it is some action taken, et cetera.

I don't know what the circumstances were and I would object to the Court taking any recognition or going beyond the status of this being some longhand recital of what transpired at a joint meeting.

THE COURT: That is the beautiful part of the Court trying the case rather than the jury. I think I can distinguish between the two.

MR. BOGEN: I don't question that, your Honor. I am just emphasizing my understanding of what the difficulty is. I don't question the Court --

THE COURT: I understand entirely. But the document is in evidence and he is reading portions of it. If you want to read portions later on you can read portions.

MR. BOGEN: I don't want to engage in that exercise.

THE COURT: All right.

BY MR. ADAMS:

Q Mr. O'Reilly, I believe you stated that you were the secretary to the meetings of the Joint Adjustment Board, is that correct?

A Correct.

Q Do you keep the minutes of that board?

A Yes.

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2 Q Have you had any responsibilities for developing
3 this mathematics curriculum?

4 A Yes. At the time that I was mathematics
5 chairman, I helped to write the syllabus for tenth and
6 eleventh year mathematics in New York City and I was a
7 member of the Regent Committee for three years, writing
8 examinations, so I was very closely involved in it.
9

10 Q Do you have a knowledge of the present mathematics
11 curriculum in the New York City School System?

12 A Yes.

13 Q Are you familiar with the overall curriculum
14 standards and requirements outside of math and including
15 math in the New York City High School System?

16 A Yes.

17 Q Are you familiar with the standards and criteria
18 required for students to obtain a high school diploma in
19 the New York City School System?

20 A Yes. I served on the committee that wrote the
21 most recent requirements for a high school diploma.

22 Q Mrs. Joly, is there a requirement in the New
23 York City School System as to a certain level of reading
24 skills which are necessary prior to receiving a diploma?

25 A Yes.

Q What level is that?

A 8.0.

Q When you say 8.0, what does that mean?

A It means that the student must attain an ability to comprehend reading and vocabulary at a level of an average eighth grade student through the United States.

Q To your knowledge, Mrs. Joly, is this requirement the same as or different from other areas of the State or country?

A Most of the high schools in the nation do not have any reading requirement for graduation.

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Q To your knowledge, Mrs. Joly, are there persons who graduated from the New York City high school system with a diploma who can read at a level that is no higher than the eighth grade level?

A Yes.

Q Does the New York City high school diploma represent a fixed body of subject matter which has either been taught to or learned by a student?

MR. BOGEN: I will object to this, your Honor. This is the expert witness called by the government. I think this is a leading question. I think it would be appropriate if the witness told us what the circumstances are.

THE COURT: I'm going to let her answer the question because I think we are going to shortcut something here.

MR. BOGEN: For that purpose, I will withdraw the objection, your Honor.

THE COURT: I think the answer is fairly obvious.

A A description of what the high school diploma represents?

MR. ADAMS: No.

THE COURT: Read the question back.

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(Question read)

A No.

Q Mrs. Joly, could you tell us what the requirements for a high school diploma are in New York City?

A A high school diploma represents passing which means attaining a grade of 65, in forty-five courses, a course being roughly a term's work although since we accept work experience and other types of education that are not based on the number of minutes in the classroom it need not be a term's work, but it's 45 course credits, and those 45 course credits must include eight in English, communications, arts, speech, drama and that sort of thing, six in social studies, four in mathematics, four in science, one in health, four in art, music, practical arts, seven in physical education, and all the rest in free electives.

Q In the high school diploma requirements as you have described, Mrs. Joly, could a student complete his four required semesters of math without having been taught concepts of numerical trigonometry?

A Yes.

Q Could a student complete his four required semesters of math without having been taught basic algebra?

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A Yes.

Q Could a student complete his four required semesters of math without having been taught the concepts of the Pythagorean theorem?

A Yes.

Q Are the concepts of numerical trigonometry, basic algebra and the Pythagorean theorem included in the high school math curriculum?

A Yes. For some students.

Q Mrs. Joly, for the student of a normal academic achievement, at what level are decimals taught in the New York City school system?

A Sixth grade elementary school.

Q For a person of normal academic achievement, at what level are fractions taught in the New York City high school system?

A It's not the high school system, in the New York City system, fourth, fifth and sixth grade, elementary school.

Q For the person of normal academic achievement, at what level in the New York City school system is the concepts of numerical trigonometry taught?

A Ninth grade.

Q And at what level are the concepts of basic

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1 algebra taught?

2 A Ninth grade.

3 Q And that is for a student of normal academic
4 achievement?

5 A Yes.

6 Q For a student of normal academic achievement
7 at what level are the concepts of plane geometry taught?

8 A Deductive geometry, you start in the tenth
9 year. Intuitive geometry and understanding of shapes
10 and sizes is taught in the seventh, eighth and ninth
11 grade.

12 Q At what level in the New York school system,
13 Mrs. Joly, for a person of normal academic achievement
14 would the concepts of the Pythagorean theorem taught?

15 A Ninth year.

16 Q Mrs. Joly, I'm handing you at this time what
17 has been marked as Plaintiff's Exhibit No. 70 for identi-
18 fication.

19 Have you had an opportunity to review a copy
20 of what is Plaintiff's Exhibit 70 in evidence?

21 A Yes.

22 Q Now, I ask you to look at the first page of
23 Plaintiff's Exhibit 70.

24 What are the mathematical concepts necessary
25

to the solution of the problems on page 1?

A Page 1 is teaching how to convert a decimal expression into a whole number and fraction expression, so it's both decimals and fractions.

Q At what level or at what grade level for a student of normal academic achievement are those concepts taught?

A Fourth, fifth and sixth grades.

Q I would ask you to look at page 2 of that exhibit, and could you tell the Court what mathematical concepts are necessary to the solution of the problems on that page?

A Page 2 covers both the Pythagorean theorem and numerical trigonometry because it involves the three sides and three angles of a right triangle.

Q At what level are those concepts taught for a normal academic student?

A Ninth grade.

Q I ask you to look at page 3, Mrs. Joly.

A Page 3 are questions about soldering and sheet-metal and chloride of zinc and so forth which have no direct connection with mathematics.

Q I would ask you to look at page 4.

A Page 4 is a review of the four fundamental

operations, adding, subtracting, multiplying, and dividing with whole numbers.

Q What level --

A Fourth and fifth grade.

Q That is the level that that would be taught to a normal academic student?

A Yes.

Q I would ask you to look at the fifth page, Mrs. Joly.

What concepts are necessary to the solution of the problems on the fifth page?

A An understanding of the meaning of a fraction and the addition and subtraction of fractions.

Q At what level are those concepts taught in the City school system?

A Fourth and fifth grade.

Q I would ask you to look at the sixth page.

A Sixth page is similar with common fractions, multiplication and division of fractions.

Q What level would those concepts be taught?

A In the fourth, fifth and sixth grade.

Q I would ask you to look at the seventh page.

A Instead of working with pure numerics on the seventh page, we have quantities like 16 ounces or one-half

1 inch measurement quantities, and the operations are
2 multiplication, largely multiplication, with those numbers.

3 Q At what levels are the concepts necessary to
4 solve those problems taught to a normal academic student?

5 A These are verbal problems written in English,
6 and they are taught at the same time that the concepts
7 are taught in the fourth, fifth and sixth grade of
8 elementary school.

9 Q I ask you to look at the eighth page now, Mrs.
10 Joly. And what are the concepts necessary to solve the
11 problems on that page?

12 A These problems involve the multiplication of
13 a unit of linear measure, like two feet six inches by a
14 pure numeric, like three, five, seven, nine. That is
15 also taught in the fourth, fifth, sixth, seventh grades
16 of elementary school.

17 Q I ask you to look at page nine, Mrs. Joly,
18 which I think is identified as Test No. 6 up at the top.

19 A Yes.

20 Q And I ask you what concepts are necessary for
21 the solution of the problems on that page?

22 A These are still working with measurements
23 exclusively; feet and inches. And it's addition and sub-
24 traction of those measurements.
25

Q What level?

A And some multiplication also. Three pieces of metal, six feet, 4-3/4 inches, that is multiplication or adding depending on the process you choose to use for them.

Q At what level would those concepts necessary to solve those problems be taught?

A The same place in elementary school, probably fifth, sixth, seventh grade.

Q I ask you to look at page 10, which I believe is called Test No. 7, and ask you what concepts are necessary to solve those problems on that page.

A The first page is the finding of the square root to the nearest tenth of some whole numbers and also some numbers to the nearest thousandth or hundredth. That is taught in the eighth grade.

The second part of the page is applying that knowledge of how to find square root, defining one side of a triangle when two sides are given; that is Pythagorean theorem. That is taught in the ninth grade.

Q I ask you to look at page 11, Mrs. Joly. And ask you what concepts are necessary to the solution of the problems on the eleventh page.

A Part 1 is the solving of equations of the

first degree, one of them, Example 4, is of the third degree. Simple equations, except that they do involve clearing both sides of the equation of fractions and/or decimals by multiplication of both sides by the same numbers.

That is elementary algebra taught in the ninth grade.

The bottom half of the page is applying that ability in algebra to the solution of problems written in verbal form, which youngsters find a great deal more difficult than merely solving the equations because they have to translate the words into the equation.

That is taught in the ninth grade at the same time as the solution of the equations is taught.

Q I ask you to look at what I believe is the last page, is that correct, of Plaintiff's Exhibit 70.

A Yes.

Q And ask you what concepts are necessary to solve the problems on that page.

A Some of these are questions about sheetmetal which have "What are ferrules" and questions of that type. The rest are mathematical problems, including the volume, a solid shape, and that is intuitive solid geometry, that is taught in the eighth grade, and some application

of algebra to some of these would be necessary, so that ninth grade would be necessary for some of them.

Q Mrs. Joly, I'm going to hand you -- I am handing you what is marked as Plaintiff's Exhibit 62 in evidence,

Have you had an opportunity to review the questions 74 through 92 on that exhibit or a copy thereof?

A Yes.

Q What mathematical concepts are required to solve the problems included in questions 74 through 92?

A These are labeled math. They involve finding the perimeter of a duct, how many degrees are in $1/9$ of a circle, what is the area in square inches of a 12 inch diameter circle.

They would need the concept of the area of a circle, of the relation between the diameter of a circle and its circumference, both of which are taught in the eighth grade intuitively, that is, I mean without proof.

The geometric proofs of these things are taught in the tenth grade but how to do them is taught in the eighth and ninth grade.

Q Do the questions on Plaintiff's Exhibit 62 that are numbered 74 through 92 include any concepts that we have not discussed in your prior testimony?

A Except for that, I had not noticed any on any

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2 of the other tests that involved the concept except the
3 circumference of the circle is pi times the diameter,
4 and that does appear here. I didn't see it on the other
5 tests.

6 Q You did not see that on Plaintiff's Exhibit 70
7 which I handed to you earlier?

8 A No.

9 Q And that is the concept which is taught at
10 what level?

11 A Eighth grade or ninth.

12 Q Mrs. Joly, I'm handing you Plaintiff's Exhibit
13 67.

14 A Excuse me, but this example 95 does including
15 folding flat shapes up into solids. We didn't mention
16 that before, but that is all intuitive solid geometry
17 so that is seventh and eighth grade.

18 MR. ADAMS: May the record reflect that
19 Mrs. Joly is referring to Question 95 on Plaintiff's
20 Exhibit 62.

21 Q Mrs. Joly, I'm handing you what has been marked
22 as Plaintiff's Exhibit 67 in evidence, and I ask you whether
23 you had an opportunity prior to your testimony here today
24 to review the questions numbered 62 through 75?

25 A Yes. They're entitled sheetmetal math.

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Q Are there any concepts necessary to solve those problems which we have not discussed in your earlier testimony?

A No.

Q I refer you specifically to Question No. 75.

A It asks, "What is the stretchout of a 12 inch diameter paper?"

The mathematical concept would still be knowing the relationship between the diameter and the circumference of a circle. The sheetmetal concept would be the meaning of stretchout, of course.

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Q That is a mathematical concept taught at what level of the high school system?

A Eighth grade.

Q Mrs. Joly, to your knowledge are there people who have graduated from the New York City High School System with a diploma who have difficulty in reading the examinations that I have shown you marked as Plaintiffs' Exhibits 62, 67 and 70?

MR. BOGEN: Objection.

THE COURT: Sustained.

Q Mrs. Joly, in reviewing Plaintiffs' Exhibit 62, 67 and 70, to read these examinations would they require a level of reading ability above the eighth grade?

MR. BOGEN: Objection.

THE COURT: Sustained.

Q Mrs. Joly, to your knowledge are there people who graduated from high school who would not be able to successfully complete --

MR. ADAMS: No further questions, your Honor.

THE COURT: Ms. Gross?

MS. GROSS: The City has no questions of this witness.

MR. ROTHBERG: At this time, prior to our deciding to examine or not examine the witness, I call upon the

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2 A Most take it in grades nine and ten, that is
3 the four courses.

4 Q Some take it in eleven and twelve?

5 A Yes, particularly the ones that failed in the
6 ninth and tenth.

7 Q So could we agree then that students that aren't
8 that well versed in math would take it in the eleventh
9 and twelfth grade and in that group it would be spread
10 over four years rather than two years?

11 A Yes.

12 Q The more able students --

13 A Wouldn't be taking remedial math at all.

14 Q They would have taken those courses in the two
15 terms, in the ninth and tenth?

16 A And have the four and in the eleventh he could
17 elect to go on if he was ready for it.

18 Q If a student was not able possibly or if he
19 took remedial math he probably would complete the four
20 courses in the eleventh and twelfth grade; is that a fair
21 statement?

22 A It wouldn't be fair to assume every single
23 youngster fails when taking it the first time in the ninth
24 and tenth. We have quite a few who finish all four courses
25 by the end of the tenth year.

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The college prep, regents, tenth, eleventh and twelfth year courses do not teach measurement; they use it on occasion.

Q With respect to the mathematics that we are talking about, somebody who graduates out of your area, the eighteen schools and the four schools that we have discussed, has a diploma; that diploma indicates, at least on a minimum basis, that they have completed the four -- successfully completed the four semesters of the mathematics we have been discussing; is that correct?

A Yes. No two people would necessarily have the same four maths.

Q And that math would consist of the items that we discussed, algebra, geometry of some kind -- are you saying no?

A Some of them never touch algebra at all. Some of them, all four courses are arithmetic or record keeping or of that type of arithmetic that we have been talking about.

Q But it would indicate some proficiency to the extent that they passed courses in mathematics of some kind; is that correct?

A They pass four courses, but I think the thrust of our discussion is that those four courses might include

than complete?

A There are a number of areas where Local 28 took objection to the inflated figures of the employer, where they requested manpower that were not contained in here.

Q How about the figures that came from the union?

A They are fairly accurate, the figures that came from the union.

Q I refer now to Page 4, bottom paragraph. You are, I believe, looking at 89 for identification and I am looking at 95 in evidence, and are we agreed that we are both looking at the same thing?

A You have 95. I can't read it when you run around with it.

Q Referring to Page 4, the last paragraph on Plaintiffs' Exhibit 95, is the figure that is given there as to the number of permits outstanding by Local 28 an accurate figure?

A The number of assignments is accurate. How many were actively working at that time is not accurate.

Q Is that the number of identification slips that were given out?

A Right, that's what that means.

Q I am handing you what is marked as 90 for identification and ask you whether you can identify that, Mr.

O'Reilly?

A Yes, a letter from the Sheetmetals Contractors Association, addressed to me, August 28th, 1970.

Q What is the sheet underneath it? What does the letter purport to transmit, if anything?

A Two sets of minutes from the Joint Adjustment Board.

Q I think you have had an opportunity to look at those minutes, is that correct, since yesterday?

A Correct.

Q Are those the minutes of the Joint Adjustment Board for the meeting on the date set forth in that exhibit for identification?

A They are the employer's draft of the minutes of the Joint Adjustment Board.

Q Are the figures in those minutes that are purported to be from the union accurate?

A The figures that are mentioned in here were received on manpower reports. They weren't from the union. They were on joint manpower reports, those figures, what you are talking about.

Q Now, I think I can shorten this situation. Referring to the top paragraph on Page 4 --

A Do you want me to quote on that, comment on that?

Q Yes. Is that an accurate description of what you said at the meeting?

A The accurate description is that 238 new men were given assignment slips, but it was contested by the employer that out of 238 there was only roughly 15 that ever stayed at work, most of them were short-term, they had quit and returned or left the employ of the company, and that was the big contention there; there was no 238. It was less than 38. The employers said only 15 actually.

Q But the union said 238.

A Right, but the employer challenged this and that statement there, it's right in that paragraph, that there was nowhere near 238 ever went to work.

Q There is no dispute that you said 238 permits had been granted?

A Not permits; there were assignments made.

Q Doesn't it say grant permits?

A That is the employer's draft of these minutes.

Q You didn't draft 238 more permits?

A No. They were assignments, identification slips, and we signed out men.

Q In other words, you granted out 238 more identification slips?

A Right.

2.2pm

2 Q And that says since July 16, 1969; is that
3 correct?

4 A '70.

5 Q July 1970; is that correct?

6 A Right.

7 MR. ADAMS: Your Honor, we would like to offer
8 that paragraph of Plaintiffs' Exhibit No. 90 into evidence.

9 MR. BOGEN: If your Honor please, I would not have
10 any objection to that introduction -- withdrawn.

11 I object to the introduction of that. I think
12 we could have the testimony. I request that that portion
13 of the paragraph be read into the record as to what Mr.
14 Adams has been discussing with Mr. O'Reilly. There is some
15 reference to it. I have certainly seen the document before.

16 THE COURT: Are you going to use any other part
17 of it, Mr. Adams?

18 MR. ADAMS: No.

19 THE COURT: Let's read it into the record. Why
20 don't you read it into the record instead of having another
21 exhibit? Read the whole paragraph.

22 MR. ADAMS: This is Page 4. There are actually
23 two sets of minutes for two separate meetings held on
24 August 19th, 1970 of the Joint Adjustment Board. This is
25 Page 4 of the second set and I am reading from the first

2 paragraph:

3 "Ed O'Reilly stated that since July 16, 1970,
4 238 new men have been granted permits to work. Mr.
5 Lipka thereupon noted that one of the serious problems
6 with permit men is the tremendous turnover and that many
7 companies have had upwards of 150 permit men since the
8 first of the year, although less than 15 are working.
9 If the men would stay for an extended period of time it
10 would help the situation, but with men constantly coming
11 and going, it is a tremendous burden on the employer.

12 "He also pointed out that of the 238 permits
13 issued, one does not know how many men are still working
14 and that many men who receive permits leave without advising
15 the union. Mr. Lipka reiterated that we definitely need
16 men and asked what could be done about the situation."

17 MR. BOGEN: If that is being offered, may I have
18 a voir dire with respect to that aspect of it?

19 THE COURT: No. I will receive it.

20 MR. BOGEN: At this point, if your Honor please --

21 THE COURT: You will get an opportunity on
22 cross-examination.

23 MR. BOGEN: Thank you.

24 BY MR. ADAMS:

25 Q Mr. O'Reilly, I think you testified yesterday,

1 and correct me if I am wrong, that you were involved in
2 the process of contacting other sheetmetal unions with
3 respect to getting workers to come to New York to work
4 in Local 28's jurisdiction; is that correct?
5

6 A Correct.

7 Q And did you contact the locals in New Jersey?

8 A Yes, on occasion.

9 Q And did you contact the locals in New York State?

10 A Yes, on occasion.

11 Q Did you contact Local 55 in Long Island?

12 A Yes, on occasion.

13 Q Did you ever have any communication with Local 400
14 in New York City about the need for Local 28 to have as
15 many qualified sheetmetal workers as possible?

16 A No. It was only building and construction locals
17 that we contacted.

18 Q Mr. O'Reilly, as an officer of Local 28, were
19 you ever informed by the contractors association that
20 some of the contractors had been disqualified from City
21 sheetmetal projects because of the lack of minority sheet-
22 metal workers?

23 A We were told about it, but there was nothing
24 documented that they were ever disqualified.

25 Q But you had knowledge of, or you were informed of

2 that factor contention by the contractor?

3 A Contention, that's right.

4 Q And this occurred about 1968?

5 A I am not sure.

6 Q Mr. O'Reilly, were you ever present at a Joint
7 Adjustment Board meeting where the subject of the con-
8 tractors' had difficulties with the City, because of the
9 lack of minority workers in the sheetmetal trade, was ever
10 discussed?

11 A No. At a Joint Adjustment Board it might have
12 been discussed; not an authorized Adjustment Board because
13 it wasn't a topic that was covered under the Joint Adjustment
14 Board or a violation that should have been covered under
15 the Joint Adjustment Board.

16 Q At a meeting of the Joint Adjustment Board,
17 whether authorized or unauthorized, did the contractors
18 ever make a proposal to form a non-discriminatory hiring
19 committee?

20 A That subject was not covered by our collective
21 bargaining agreement, so to my knowledge it couldn't have
22 been proposed legally at any joint adjustment board.

23 Q Was the proposal made?

24 A To my knowledge, no.

25 Q I would like to hand you what has been marked as

2 Plaintiffs' Exhibit 92 for identification, which I think
3 you have had an opportunity to review both last night and
4 in a prior deposition. I specifically refer you to the
5 bottom of the next to the last page and the last page.
6 Would you take a look at that just briefly?

7 A Yes, go ahead.

8 Q Does that refresh your recollection at all,
9 Mr. O'Reilly, about whether there was ever a proposal made
10 by the Contractors Association for a non-discriminatory
11 hiring committee?

12 A Well, firstly, the minutes is not my minutes.
13 This is an employer's draft of the minutes.

14 Q Does that document refresh your recollection as
15 to whether there was a proposal made by the Contractors
16 Association to form a non-discriminatory hiring committee?

17 A The subject was not a matter of the Joint
18 Adjustment Board and it states right in here, "Mr. Farrell
19 said the Joint Adjustment Board can only hear complaints
20 that Local 28 has violated its contract. Nothing has
21 been said about the violation of the contract on the part
22 of Local 28, and the Joint Adjustment Board -- there is
23 nothing for us to consider", and that was the position of
24 the local union at that time. That is all I recollect on
25 it. It was not considered by us.

Q Do you recollect whether a proposal was made, whether justified under the rules of the collective bargaining agreement or not?

A No, I don't recollect.

MR. ADAMS: At this point, I would ask for a stipulation from counsel that what has been marked as 92 for identification is also marked as Government's Exhibit 8 at the deposition of Mr. O'Reilly to which I will refer.

MR. BOGEN: Yes, your Honor, so stipulated.

Q Mr. O'Reilly, at your deposition -- you recall your deposition being taken?

A Well, it's over two years ago. One is three years. Yes.

Q Do you recall your deposition being taken?

A Taken, yes, sure.

Q Do you recall these questions that were propounded by Mr. Wohl and the answers that you gave:

"Q Would you look at Government Exhibit 8 for identification and read that to yourself, please?

"A Go ahead.

"Q Does that exhibit, that is, Exhibit 8, refresh your recollection as to some of the discussions at that meeting on August 22, 1968?

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"A Yes.

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"Q Does it refresh your recollection on the point of whether the employers made this proposal of a non-discriminatory hiring committee for the purpose of complying with the City's executive order?

7

"A Yes, they made that motion in that respect."

2.3pm

8

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10

Does that refresh your recollection now that the employers did make a proposal at the meeting specified in Government's Exhibit 92 for identification --

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12

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MR. BOGEN: If your Honor please, I would not object to the question as such, but I request the opportunity to read the subsequent questions that were propounded at that time, to put in context this so-called recollection.

15

16

MR. ADAMS: Could I have an answer to that question?

17

18

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THE COURT: Let's have an answer to his question.
A The answer to that question is, it was the position we took, that it wasn't to be entertained at the Joint Adjustment Board. It might have been proposed.

21

22

23

THE COURT: Mr. O'Reilly, please answer the question. The question is, do you recollect being asked those questions and having giving that answer?

24

25

THE WITNESS: It was proposed at that meeting.

THE COURT: You are still not listening.

1 THE WITNESS: Oh, go ahead.

2
3 THE COURT: The question is -- and this is one
4 of the problems with this examination -- the question is,
5 do you remember being asked those questions and giving
6 that answer?

7 THE WITNESS: At the deposition, yes.

8 THE COURT: All right. That is the answer.

9 Now you may.

10 MR. BOGEN: Thank you, your Honor.

11 Continuing on:

12 Q "Q Was there a vote taken on the motion?

13 "A According to the minutes here, it was.

14 "Q What was the motion --

15 "MR. BOGEN: Are you asking him to read from
16 the document?

17 "MR. WOHL: I am asking him does it refresh his
18 recollection.

19 "THE WITNESS: I am not going to comment. I am
20 only reading from here. I had forgotten what transpired.
21 All I would be able to do is read from that.

22 "MR. BOGEN: I would like to get it clear. Your
23 response to -- the last answer you gave to Mr. Wohl, was
24 that based upon your independent knowledge or were you
25 reading?

1 "THE WITNESS: No, I was reading from the
2 minutes.
3

4 "MR. BOGEN: So we can proceed ahead, maybe this
5 will refresh his memory or not. I thought it didn't. I
6 wasn't clear in my own mind where the answers were coming
7 from. I got the impression from what the witness said that
8 it was not his recollection or his current understanding.
9 He simply was reading from the document."

10 THE COURT: That is Mr. Bogen testifying.

11 MR. BOGEN: That is the argumentation.

12 THE COURT: I say that is Mr. Bogen testifying
13 now.

14 MR. BOGEN: With respect to the argumentation,
15 yes.

16 THE COURT: I am not listening to argument. I
17 am listening to testimony.

18 MR. BOGEN: I ask that my comments be stricken
19 from this record, your Honor. I certainly don't want --
20 I wanted to have the sequence.

21 "Q I gather, Mr. O'Reilly, that you recall
22 being informed that the employers had said that they were
23 being disqualified by the City because of the failure to
24 take affirmative action with respect to the minority hiring,
25 is that correct?

1 "A Something to that effect, yes.

2
3 "Q Do you recall a meeting of the Joint
4 Adjustment Board at which you were present where that matter
5 was discussed?

6 "A No, I don't recall that meeting actually."

7 Now, obviously what has happened, going to the
8 deposition and what has happened here, as your Honor
9 pointed out yesterday and observed quite accurately, the
10 witness, having seen the minutes, said yes, it took place,
11 it's in the minutes, but it didn't in effect, refresh his
12 recollection at the deposition or it doesn't apparently
13 at this point.

14 I think the entire transcript of what I just
15 read, excluding my remarks or objection, confirms exactly
16 what has taken place here today.

17 MR. ADAMS: Your Honor, I don't think that does
18 at all. I think it says that, really, in fact, he didn't
19 remember. The next question was asked as to what the vote
20 was or whether there was a vote --

21 THE COURT: We are not going to have an argument
22 as to whether he did or didn't recollect it. It is in the
23 record.

24 Q Mr. O'Reilly, in Local 28's collective bargaining
25 agreement there is a provision referring to the hiring of

1 men by contractors, the men being not members of the union
2 at the time of hiring, and referring to procedure for
3 requiring membership in the union within seven days.
4 Are you familiar with that provision?
5

6 A I know it's part of the agreement, yes.

7 Q Can you explain how that procedure works?

8 MR. BOGEN: I will object, your Honor. The
9 document speaks for itself. It is in evidence.

10 THE COURT: I don't think it speaks that easily
11 or completely. He is asking for how it operates.

12 MR. BOGEN: If your Honor please, may I have
13 that portion read at this time to indicate -- I don't
14 know if your Honor has that document before him.

15 THE COURT: Mr. Adams has the document. He
16 has read it.

17 MR. BOGEN: I presume my objection to the --

18 THE COURT: All right, will you read the particular
19 section of the agreement?

20 MR. ADAMS: I am going to read from Plaintiffs'
21 Exhibit 55. It is Article 4, Section 1.

22 "The employer agrees to require membership in
23 the union as a condition of continued employment for all
24 employees performing any of the work specified in Article 1
25 of this agreement within seven days following the beginning

1 of such employment or the effective date of this agreement,
2 whichever is the later, provided the employer has reasonable
3 grounds for believing that membership is available to such
4 employees on the same terms and conditions generally
5 applicable to other members, and that membership is not
6 denied or terminated for reasons other than the failure
7 of the employee to tender the periodic dues and initiation
8 fees uniformly required as a condition of acquiring or
9 retaining membership."
10

11 MR. BOGEN: I respectfully submit, your Honor,
12 that it self-explanatory and needs no further explanation.

13 MR. ADAMS: Your Honor, I don't think it speaks
14 very clearly at all.

15 THE COURT: I respectfully disagree, therefore,
16 I overrule your objection.

17 MR. ADAMS: Do we have a question outstanding?
18 Could we have it read back to the witness?

19 THE COURT: Ask him again.

20 Q Can you explain how the procedure works under
21 that section?

22 A That section of the agreement we never used it
23 because we have had graduated apprentices or we gave
24 journeyman's tests.

25 Q There is no procedure under that section, is that

right?

A It was never used.

Q Is there any procedure in Local 28 by which non-union members who are hired by contractors can become members of Local 28?

A None of these men ever hired them, to my knowledge.

Q Are there any procedures, if anybody did?

MR. BOGEN: I will object to that question, your Honor.

A I am not familiar with any procedures.

MR. ADAMS: I think he has answered.

THE COURT: Just a minute.

MR. BOGEN: There is an objection to that question.

THE COURT: I sustain the objection.

MR. BOGEN: If there is an answer on the record, I ask it be stricken, your Honor.

THE COURT: It may be stricken.

Q Mr. O'Reilly, are you aware of any occasion where an employer who has a collective bargaining agreement with Local 28 has hired a sheetmetal worker who was not a member of Local 28?

A No, not to my knowledge.

Q Mr. O'Reilly, do you have any relations in the union?

1 obtain additional journeymen, did you or did anyone
2 to your knowledge put any condition or restriction with
3 respect to race, color or national origin or any of
4 those people?
5

6 A No. On no occasion and on many -- not many
7 occasions, on a number of occasions --

8 MR. ADAMS: The question has been answered.

9 THE COURT: Yes, the question has been
10 answered.

11 Q With respect to the people to whom ID slips
12 were issued, the additional manpower, to your knowledge
13 were any of these persons black or Spanish surname?

14 A Yes. We had one member of Local 83 in Albany
15 was a Negro worker. He worked in the area of about six
16 months.

17 We had a member of Local 102 in Washington
18 who was a Negro member. We also had a number from
19 Connecticut that worked. They were Puerto Ricans, I think,
20 and some from Jersey.

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1 jksr O'Reilly - cross

2 Q At any time did you, or to your knowledge did
3 Local 28 ever reject or refuse to accept additional
4 manpower from any sister local or any other source as a
5 result of race, color or national origin?

6 A No.

7 Q Mr. O'Reilly, since the recess of the Court
8 yesterday till the present time did there come a time when
9 you had occasion to review the answers to the Interrogato-
10 ries set forth in Local 28's supplemental answers to
11 plaintiff, a United States of America's second set of
12 Interrogatories?

13 A Yes.

14 MR. ADAMS: Could you hold on just for a second
15 so we can follow the testimony?

16 MR. BOGEN: Sure, fine. I am referring to the
17 document -- I think it has already been introduced in
18 evidence, your Honor-- labelled Defendant Local 28's
19 supplemental answers to Plaintiffs' USA's second set of
20 Interrogatories. I believe it's Exhibit 25.

21 MS. GROSS: 26.

22 MR. BOGEN: 26?

23 MR. ADAMS: Yes.

24 BY MR. BOGEN:

25 Q I believe all the counsel have the document in front

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with a Spanish surname?

A Yes. On third page, Edwin Checks out of Schenectady, New York; he was a member of Local 83 and he was a negro, and he worked in our area at that time, June 30, 1972.

Q Were there any other on that list?

A This list was compiled June 30, 1972, and it only covers that period. There were others that I couldn't spot, but I know he was a gentleman, and he worked here twice. He went home for about two months and worked up in Albany and then came back again, both times we put him to work.

Q Now, except for the information furnished in the Answer to that Interrogatory, has the Local maintained any other records of the I.D. slips that were issued?

A No. We have the I.D. -- we kept records of the slips, but not this composite. This was made from the Interrogatory.

Q Again, is there any other --

MR. BOGEN: Withdrawn.

Q I believe you stated that is the only name on that list?

A That I could identify right now.

Q You have already stated that there are, to your recollection, several other blacks and several other surnamed

1 persons who came in with the I.D. identification, is that
2 correct?
3

4 A Yes.

5 Q Can you approximately indicate the time when
6 these persons came in as additional sheetmetal workers?

7 A During the period of '69 to '72.

8 MR. ADAMS: Your Honor, at this point I would like
9 to make a motion to strike the testimony that Mr. O'Reilly
10 has given here with regard to the race and identity, to
11 his knowledge, of minorities, of permit men. These
12 questions were asked, and asked and asked time and again.
13 In discovery, requests were made by the Government, and
14 we were given no information, and it was finally stipulated
15 in fact, that the people who were given I.D.cards, none
16 of them were non-white.

17 At this point we are put at a terrible disadvantage
18 to either find this out or not when we have asked this
19 question on interrogatories that I think are dated either
20 late '72 or early 1973, and took considerable time to
21 list. At this time, as we have pointed out, there are
22 no records or anything else. We specifically asked the
23 question, the name and race of the people on permits.
24 We have asked at depositions. We have asked informally
25 of Mr. Bogen, and to find this information out at this time,

1 5 jksr

O'Reilly - cross

2 that there were one identified person but an indication
3 of others unknown, unlocated, unidentified, we would wish
4 to strike this testimony completely.

5 MR. BOGEN: If your Honor please, in response
6 to the Interrogatories set forth very clearly in a footnote
7 and maintained throughout -- I don't think that Mr. Adams
8 and I have disagreement. Parenthetically, I think it is
9 a matter of emphasis. We have stated, and I think Mr.
10 O'Reilly stated with respect to this, this is a footnote
11 that appears on Page 10, the Answer No. 14 to the Defendant
12 Local 28's Answers to Interrogatories, the first set,
13 if you would, the third footnote, commencing sometime in
14 the latter part of 1968, journeymen sheetmetal workers
15 who were members of sister locals affiliated with the
16 International Association were temporarily in territorial
17 jurisdiction of Local 28 without permit upon registration
18 with the local [Local 28]. Race unknown. Exact numbers
19 unknown. Figures are approximations based upon some of
20 the available records of registration.

21 We then set forth thereafter the names of all of
22 these people for identification purposes.

23 At that time we further --

24 MR. ADAMS: Mr. Bogen, none of the names were
25 set forth except the ones that were in 1972, on June 30th.

1 6 jksr O'Reilly - cross

2 MR. BOGEN: Yes.

3 MR. ADAMS: But the names of prior people are not
4 set out at any time.

5 MR. BOGEN: That's correct, your Honor.

6 MR. ADAMS: Because you don't have any records.

7 MR. BOGEN: We didn't have any records and we
8 don't have any records. We set forth in further sup=
9 plementation of that answer all of the names that we had
10 and at that time we indicated that we had no additional
11 information, and we don't.

12 Our records, in response to the Interrogatories,
13 indicate what we had here, fragmentary records, at that
14 time. We have even less records. There was a move
15 and the information we wanted turned over to the United
16 States Attorney's Office, we didn't have any more information.
17 This is not from records. This is Mr. O'Reilly's
18 testimony.

19 I don't think, to the extent that it is a shock
20 or a surprise, the numbers involved are relatively clear
21 -- I found out about this yesterday, after Mr. O'Reilly
22 reviewed the document. I advised the United States
23 Attorney's Office precisely what had transpired and the
24 information that I had, and I asked him to check or indicated
25 that this would be explored, in absolute candor.

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7 jksr

O'Reilly - cross

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Now, this case, the kind of case that is involved shouldn't be determined on some type of technicality to keep out or restrain, particularly without a jury, where we attempted at all times and are attempting now to give The Court all the information we have.

4.2pm

THE COURT: Enough. This case certainly isn't going to be determined on whether or not permits were issued by 28 to six non-whites. So I am going to let it in. I don't think we ought to go any further in that subject.

MR. BOGEN: No.

BY MR. BOGEN:

Q At this time, Mr. O'Reilly, do you have any information with respect to any identification at all with respect to the blacks or Spanish surnamed sheetmetal workers who came in from sister locals other than what you have given us?

A No, that's it.

MR. BOGEN: At this time, your Honor, I have no further questions on cross-examination of Mr. O'Reilly. I reserve the right to call him as our witness with respect to our position.

THE COURT: Obviously. At this time we are going to take a short recess.

1 8 jksr

O'Reilly - cross

2 [Recess.]

3 THE COURT: Mr. Adams, I haven't asked Mr.
4 Tuminaro whether he had any questions.

5 MR. TIMINARO: I have no questions at this time.

6 REDIRECT EXAMINATION

7 BY MR. ADAMS:

8 Q Mr. O'Reilly, you stated that if a transfer were
9 rejected or a transfer application were rejected by Local
10 28, or the transfer applicant had an opportunity through
11 appeal procedures to the International Association, is that
12 correct?

13 A Correct. A member of the International Association
14 governed by our constitution.

15 Q That would be a transfer from another sheetmetal
16 local, is that correct?

17 A Correct.

18 Q How does that procedure work?

19 A Well, if it is requested and the transfer is
20 rejected, then under the constitution, if he felt it should
21 have been accepted, then he would address his complaint
22 in letter form to our general secretary-treasurer in the
23 International in Washington.

24 Q And that would apply to somebody who had appeared
25 before the Executive Board and asked for a transfer?

1 9 jksr

O'Reilly - redirect.

2 A Yes, any complaint would state that, that he
3 appeared, requested and was turned down by the local union.

4 Q How long does that procedure take? Now, let me
5 just get it straight. A person appears before the Executive
6 Board and has his transfer application rejected; is that
7 correct?

8 A Correct.

9 Q And how long does it take the Executive Board to
10 act?

11 A They act right there at that meeting.

12 Q There is no application? A person just shows up
13 at the Executive Board?

14 A He appears in person.

15 Q He doesn't file any application prior to that?

16 A He appears with a transfer card. The transfer
17 card is a permanent form he requests from his local that
18 he is presently in. They issue it. They issue a formal
19 transfer card. It is pink.

20 And he then appears in person at the union he is
21 seeking to transfer into and presents this transfer card
22 to the union he requests to be transferred to.

23 Q Does he have to find out from somebody when the
24 Executive Board meets?

25 A Yes, mostly anyone interested calls the union and

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10 jksr O'Reilly - redirect

are advised of the regular Executive Board meeting.

Q And then the Executive Board, if the Executive Board rejects his application, what does the transfer applicant do?

A He is given back his transfer card and told the reasons why he is rejected.

Q And then what does he do in order to appeal to the International?

A That is up to the individual. He can follow the provisions of our constitution which allow him to appeal, as I said before, in a letter addressed to the general secretary-treasurer.

Q And then what happens when the letter gets to the general secretary-treasurer, if you know?

A I don't know. It is taken up by him and he rules on it constitutionally.

Q And if the ruling is favorable to the transfer applicant, what happens then?

A We have had occasion where they have ruled in favor of the individual and we were directed to accept his transfer.

Q Is that the procedure that was involved in transfers from Local 401?

A I am not familiar with the 401 transfers.

1 Q Did you find qualified sheetmetal workers
2
3 in the ironworkers?

4 A They had certain skills that qualified them
5 on a temporary basis, a short-term temporary basis.

6 Q Did you find qualified sheetmetal workers
7 in the pipefitters?

8 A Yes. They had some skills that on a temporary
9 short-term basis --

10 Q Did they have sheetmetal skills that were
11 equal to those of journeymen sheetmetal workers in Local
12 28?

13 A Not overall, no.

14 Q What skills --

15 A They had building trades skill on building
16 trade construction practices.

17 Q Would they know what an attenuation box was?

18 A A steamfitter would, yes.

19 Q Would they know how to make one?

20 A Not basically, no.

21 Q Would a carpenter know how to make one ?

22 A We didn't have any carpenters.

23 Q Now, Mr. O'Reilly, you stated that in 1972,
24 that there had been a collective bargaining agreement
25 which was signed at the end of August, I believe, after

1 RDJW 19

2 EDWARD STACK, called as a
3 witness, being first duly sworn, testified as
4 follows:

5 MR. CORSI: At this time I would like to
6 call Mr. Stack as an adverse party under Rule 43(b).

7 THE COURT: That is granted.

8 DIRECT EXAMINATION

9 BY MR. CORSI:

10 Q Mr. Stack, would you state for the record
11 your address, please.

12 A 2243 Elderberry Drive, Westbury, Long Island.

13 Q Are you a member of Local 28?

14 A I am.

15 Q What is your present position with Local 28?

16 A President and business manager.

17 Q Would you describe for us please your
18 educational background.

19 Q I completed nine years of school.

20 Q When did you become a member of Local 28?

21 A January '54.

22 Q Prior to becoming a member were you an
23 apprentice?

24 A Yes.

25 Q When did you begin the apprentice program?

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Stack-direct

2 A In January of '50.

3 Q I take it that was the Local 28 apprentice
4 program?

5 A That is correct.

6 Q In order to become an apprentice did you
7 file an application at about that time? That is January
8 1950.

9 A Yes.

10 Q As part of that application, did you take
11 an aptitude test, an apprentice aptitude test?

12 A No.

13 Q Was your application accompanied by a
14 recommendation from someone or were you sponsored in some
15 way?

16 A Sponsored.

17 Q By whom were you sponsored?

18 A My grandfather.

19 Q In addition to your grandfather, do you have
20 any other relatives that at any time were members or
21 apprentices of Local 28 or are presently members?

22 A Yes.

23 Q Would you state who those individuals are.

24 A My brother.

25 Q Is he currently in 28?

1 rgjw 21 Stack-direct
2 A Yes, several cousins.
3 Q Several meaning two?
4 A More than five, more than six.
5 Q More than five or six?
6 A Yes. And an uncle.
7 Q Is he also active?
8 A Yes.
9 Q Are there any others?
10 A That's all.
11 Q Mr. Stack, when did you become president of
12 Local 28?
13 A July 1st of '74.
14 Q Is that an elected position?
15 A Yes.
16 Q Do you presently hold any other positions
17 in Local 28?
18 A No.
19 Q Let me rephrase that, if I may.
20 I take it you do not hold any other offices
21 in Local 28.
22 A That's correct.
23 Q Are you a member of any boards or committees
24 of Local 28?
25 A I am a member of the executive board by virtue

1 rgjw 22

Stack-direct

2 of my office.

3 Q Are you a member of the Joint Adjustment
4 Board?

5 A Yes.

6 Q Are you a member of the executive committee?

7 A Yes.

8 Q Prior to becoming president in July of last
9 year, did you hold any other offices in Local 28?

10 A Yes.

11 Q What offices were they?

12 A Business agent.

13 Q During what period of time were you a business
14 agent?

15 A April of '67 until June 30th of '74.

16 Q Again prior to becoming president and either
17 before or during the time that you were a business agent,
18 did you hold any other positions or were you a member
19 of any board? Or committee?

20 A I was a member of the Joint Adjustment Board.

21 Q And when would that have been, sir?

22 A 1967 to June of '74.

23 Q Well, that has continued now, I take it?

24 A Right.

25 Q Were you a member of the executive board?

1 rgjw 25 Stack-direct

2 A Normally.

3 Q I would like to step back now to the period
4 during the time in which you were a business agent for
5 Local 28.

6 Could you describe for us what functions or
7 duties, if any, a business agent has?

8 MR. BOGEN: Your Honor, I object strenuously
9 to the tail of that, if any. I ask that that be stricken.

10 MR. CORSI: I would withdraw that. It was
11 not intended to apply.

12 THE COURT: It may be struck and you are getting
13 very sensitive. We all know that business agents have
14 a lot of work to do.

15 MR. BOGEN: If your Honor takes judicial
16 notice of it I won't have any --

17 THE COURT: I do.

18 Q Again, Mr. Stack, I apologize. There was
19 no negative implication to that comment.

20 Would you describe for us the functions and
21 duties of a business agent?

22 A To please the agreement, the present agreement,
23 or the agreement at that time; to answer the complaints
24 of the members; to report to the membership periodically
25 and for me to really get into organizing, the field or

2 organizing, if and when we can.

3 The duties are so general in scope that to
4 sit here and describe them without some thought before-
5 hand for a good period of time would be kind of presumptuous
6 of me.

7 Q I believe though you did indicate that one of
8 the duties or responsibilities would be to organize if
9 there is any organizing to be done.

10 A Right. Yes.

11 Q When you use the term "organizing," could
12 you describe more specifically what that means, please?

13 A If there is a shop or men in the shop desirous
14 of membership you are sent to organize.

15 Q I'm sorry, did you say a non-union shop?

16 A Non-union shop.

17 Q The phrase "non-union shop," would that also
18 include shops that are affiliated, if there are any shops
19 so affiliated, with other unions that have sheetmetal
20 workers as members?

21 A I have to say no to that.

22 MR. BOGEN: What was the answer?

23 THE WITNESS: No.

24 Q Did you understand my question?

25 A I don't think I did.

1 rgjw 27 Stack-direct

2 MR. CORSI: I will withdraw that question
3 and I think I will pick that up at a later point.

4 Q During the time that you were a business
5 agent, did you ever undertake any steps to organize a
6 shop?

7 A Yes.

8 Q Do you remember what shop that was, the shop
9 that was involved in the steps that you took?

10 A A shop called Design Dect.

11 Q Approximately when did you become involved
12 with Design Duct?

13 A I don't remember the exact time. It would
14 be a few years back, though.

15 Q Would the date 1970 refresh your recollection
16 with respect to that matter?

17 A It could be 1970, yes.

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Q During the time that you were business agent did you undertake to organize or did you initiate any steps to organize any other shops?

A No.

Q With respect to Design Duct, what type of a shop was or still is that company?

A It was a fiberglass shop in that they did work in lieu of sheet metal.

Q And what kind of work did that shop produce, what kind of work did it do?

A Fiberglass duct work.

Q Any other activity?

A That is all.

Q With respect to this effort to organize Design Duct, what was your first contact with that company?

A I believe it was down in Brooklyn somewhere, could have been a post office job or a store, I don't remember the exact nature now or recall it. They were doing fiberglass work.

Q And that was the first occasion -- that is when you first became aware of the existence of Design Duct?

A That is correct.

Q And at the time that you became aware of that company, what did you do with respect to this matter?

1 2 jksr

Stack - direct

2 A I think I met the employer on the job site and
3 tried to encourage him to come in signed agreement with
4 Local 28.

5 Q If I may step back for a second, how was it that
6 you became aware of Design Duct doing this job, I think
7 you said in the post office?

8 A I might have followed it through on the Dodge
9 Report or picked it up on that type of report.

10 Q Did you receive complaints from a member?

11 A It's possible, yes.

12 Q And if you had received a complaint, what would
13 be the nature of the complaint?

14 A Non-union sheetmetal.

15 Q I believe you have just testified that as best
16 as you can recollect you met with the employer and you
17 discussed organizing it. After this preliminary or initial
18 discussion with the employer, what happened next?

19 A I believe I asked him how many employees he had
20 and if he intended to continue on that type of work.

21 Q And did he respond? What did he respond?

22 A He said yes. He told me that he had approximately
23 three men working for him and that he did intend to continue
24 in that type of work.

25 Q That he did intend?

1 3 jksr Stack - direct

2 A Yes.

3 Q Now, at that time is there any indication, were
4 you aware of whether or not the, I believe you have stated
5 three mechanics, possibly three, were affiliated with any
6 union?

7 A No.

8 Q No. You were not aware or --

9 A I wasn't aware at that time. Maybe -- somebody
10 might have told me they were affiliated with other local
11 unions, but that was never proven to me.

12 Q Did that issue ever come up? Did that issue enter
13 into any discussions with either the employer at Design
14 Duct or --

15 A No.

16 Q Did you have discussions with the mechanics
17 working for Design Duct?

18 A Yes.

19 Q And what was the nature of the discussions that
20 you had with these individuals?

21 A To find out how long they were doing that type of
22 work.

23 Q When you say that type of work, could you be more
24 specific?

25 A Engaged in duct work.

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2 Q What was the ethnic or racial identity of these
3 mechanics?

4 A I believe it was white.

5 Q All of them?

6 A Yes.

7 Q I believe you indicated that you asked them how
8 long they had been doing duct work?

9 A Yes.

10 Q What was their response?

11 A Their response was more than five years, less
12 than fifteen.

13 Q I believe now that you said there were three
14 mechanics and did each of those mechanics say that they
15 had at least five or fifteen years?

16 A Yes.

17 Q Mr. Stack, do you remember having your deposition
18 taken in this action?

19 A Yes.

20 MR. CORSI: I take it, Mr. Bogen, that the
21 stipulation follows through on this one also?

22 MR. BOGEN: Absolutely.

23 THE COURT: It follows through for all of them.
24 We have said that several times.

25 MR. BOGEN: Yes, I have said that.

6 jksr

Stack - direct

years, one was three years. It was around that vicinity.

"Q Did you ask them any other questions?

"A Nothing."

Do you remember these responses?

A I do.

Q In fact, were further questions asked about how long they were in the trade?

A Not any further than that, no.

THE COURT: I don't see anything in those responses which are in any way going to assail his testimony. They are doing the fiberglass duct work three or four years. It has nothing to do with doing duct work -- period -- throughout. They might have been doing sheetmetal for twenty years. He limited it to a period between five and fifteen years. I don't know what the materiality in the first place of all of this testimony is, and if we are going to get to this case, and get to the guts issues of the case, I think we ought to stop playing around the fringes. This is a fringe.

MR. CORSI: It seems to me, your Honor, in all due respect, it is relevant. We are trying to establish the procedures that are used in organizing shops, criteria that may be -- that are used by Local 28 in accepting membership.

7 jksr

Stack - direct

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2 THE COURT: I haven't heard anything about
3 criteria, and you know I think it is a matter of common
4 knowledge that business agents go around and try to
5 organize shops where they think there is a possibility of
6 adding to their union, so that all this questioning going
7 on for, you know, a period of time, is not instructive
8 to me, and I don't think it is going to help me to decide
9 the important issues here.

10 Go ahead.

11 MR. CORSI: I will be very brief in this area.

6.2 12 Q As part of these discussions, did these mechanics
13 indicate that they were desirous of membership in Local 28?

14 A Yes.

15 Q And what procedure had to be followed with respect
16 to gaining admission to Local 28?

17 A I brought them down to the Executive Board to be
18 examined.

19 Q When you say examined, could you explain that term,
20 please?

21 A The Executive Board examined the same area I just
22 said, how long they were working at the industry, and that
23 was the only examination that was taken at that time.

24 Q So there was no other more formalized, written
25 examination?

1 8 jksr Stack - direct

2 A No.

3 Q Did they become members or did they have to
4 serve an apprenticeship?

5 A They became members.

6 Q Were they required to pay an initiation fee?

7 A Yes.

8 Q Do you recall approximately how much that was?

9 A I do not recall.

10 MR. BOGEN: If your Honor please, for the purpose
11 of continuity, we will stipulate that the initiation fee
12 at that time, prior to that time and currently is 100 times
13 the applicable hourly rate, if that is helpful.

14 THE COURT: All right.

15 Q During the time that you had been a business agent
16 for Local 28, did you ever receive complaints from members
17 or apprentices of the local that sheetmetal work described
18 or claimed by Local 28 is being performed by individuals
19 who were members of other trade unions?

20 A Yes. Wait a minute, will you repeat that
21 question?

22 [Question read.]

23 A Yes.

24 Q Would you please describe the nature of these
25 complaints?

1 9 jksr Stack - direct

2 A Other people were doing duct work.

3 Q When you say other people --

4 A Other than members of Local 28.

5 Q That is not precisely the context in which my
6 question was asked. It was in terms of other trade unions
7 doing duct work or doing work claimed by Local 28.

8 A Yes.

9 Q Do you recall the designations or the names of
10 any of those other trade unions?

11 A Yes; Teamsters, Operating Engineers, sometimes
12 even a plumber.

13 Q Had you ever received any complaints that members
14 of Local 400 of the International was doing work that was
15 under the jurisdiction of Local 28?

16 A Yes.

17 Q Did you ever receive complaints that Local 295
18 of the Operating Engineers -- I take it that is the one
19 you are referring to?

20 A Yes.

21 Q Have you ever received complaints that members of
22 Local 275 --

23 A Yes.

24 Q And would you know with what organization Local
25 275 is affiliated, if any?

1 10 jksr

Stack - direct

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2 A I believe the Teamsters.

3 Q When you received these complaints, what, if any-
4 thing, did you do with respect to these complaints?

5 A Tried to remove the people from the job.

6 Q When you say you tried to remove them, what do
7 you mean by that?

8 A Remove them because possibly it was a union job
9 site and I tried to remove them from the union job site.

10 Q How did you go about that?

11 A Contacting the general contractor.

12 Q And what in the normal, in a typical case, if
13 there is a typical case, what would you say to the contractor?

14 A Just told him he had people other than building
15 trades people doing that work or performing that work.

16 Q And what happened after that?

17 A Sometimes we were successful and had them removed.

18 Q I believe you testified that you were a member
19 of the Executive Board during the time 1962 through 1967.

20 A Yes.

21 Q Would you describe the duties that a member of
22 the Executive Board has?

23 A The prime duty of the Executive Board is to be
24 a recommending body to the membership of the local union.

25 Q Would it be a fair statement to say that the

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1 11 jksr

Stack - direct

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2 Execu' e Board helps formulate the policies of the local
3 union?

4 A In most instances, yes.

5 Q Did there come a time when the Executive Board
6 discussed or had before it for its consideration a proposal
7 to organize blowpipe shops in New York City?

8 A That's a little before my time. I don't recall.

9 Q During the time that you were on the Executive
10 Board was there ever a discussion of the organization of
11 blowpipe shops?

12 A No.

13 Q Mr. Stack, I am showing you three pages of the
14 minutes of Local 28. Those are minutes of both the
15 Executive Board and the general membership. This is
16 Exhibit 51 in evidence. The internal pageanation is
17 Page 45. I would ask you to just briefly review this,
18 starting at the lower third of that first page.

19 As a further description for those minutes,
20 the date is January the, I believe, 3rd of 1965.

21 [Pause.]

22 MR. BOGEN: At this time, your Honor, having
23 reflected and having read through the difficult handwritten
24 copy, I would request that this be read into the record
25 because I think it is going to be difficult to follow what

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1 12 jksr

Stack - direct

2 was said or done since it is a document in the record, and
3 I assume that Mr. Corsi intends to examine Mr. Stack with
4 respect to that.

5 For the purpose of the Court following it, I
6 request that this be read into the record.

7 MR. CORSI: It goes on for two and a half pages.
8 I am not going to be examining Mr. Stack on every word
9 of this. On whatever portion I would examine him, I would
10 be more than happy to read that into the record.

11 At this point I don't see the need to read the
12 whole thing in.

13 THE COURT: It is in evidence. Let's leave it
14 in evidence for the time being until I see if I need to
15 have it read in.

16 MR. BOGEN: Thank you, your Honor.

17 THE COURT: All right. Examine him.

18 Q Mr. Stack, you have reviewed these minutes?

19 A Yes.

20 Q Do these minutes refresh your recollection with
21 respect to a discussion or proposal before the Executive
22 Committee during the time that you were a member of the
23 committee concerning the organization of blowpipe shops?

24 A It doesn't refresh my memory regarding the
25 Executive Committee meeting but it does refresh my memory

13 jksr Stack - direct

regarding the meeting of the membership.

Q To the best of your recollection did you attend
the Executive Board meeting described in the minutes?

A I don't recall.

Q Did the general membership consider and discuss
a proposal with respect to organizing blowpipe shops?

A Yes.

MR. BOGEN: Is that in point of time of the
date that is reflected in these minutes, Mr. Corsi?

THE WITNESS: Yes.

MR. BOGEN: Your question didn't have a point
of time.

MR. CORSI: Yes. I'm sorry. It's back to these
minutes, and that would be January 5, 1965.

MR. BOGEN: Thank you.

Q And did you attend that meeting?

A Yes.

Q And could you describe for us the proposal that
was put forth or discussed or considered at that meeting
with respect to organizing blowpipe shops?

A The best I can recall is the proposal was to
bring them into Local 28, but at a differential in rate.

Q Do you recall what the differential in rate
would have been?

1 14 jksr

Stack - direct

2 A I'd say less than half of the construction rate
3 or building trades rate or Local 28's rate.

4 Q What position did the Executive Board take at
5 that time with respect to this proposal?

6 A Well, I read there, from what you gave me, it
7 is a recommendation from the Executive Board, from what
8 I read there, the Executive Board's recommendation was
9 adopted not to bring Local 400 into -- not Local 400, but
10 the blowpipe industry into Local 28.

11 Q Did someone from the Executive Board discuss or
12 put forth the reasons why the Executive Board -- at the
13 general membership meeting did someone discuss or put forth
14 the reasons why the Executive Board recommended against
15 such a move, that is, organizing --

16 A I don't recall.

17 Q Did you participate in the discussion at the
18 general membership meeting?

19 A No.

20 Q Did Mr. Farrell participate in that discussion?

21 A No.

22 Q Was Mr. Farrell, to the best of your recollection,
23 present at the membership committee?

24 A That's correct.

25 Q How then was the proposal and the recommendation

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brought before the general membership?

A From what I read there, you showed me that instrument there, that it was brought forth by recommendation of the Executive Board. Mr. Farrell conducted the meeting only and did not participate in the discussion.

Q Do you remember anyone who did participate in that discussion?

A No.

Q During that meeting, was anyone from the International Association there?

A Yes.

Q And do these minutes refresh your recollection as to who they were?

A Yes.

Q Would you state for the record who they were?

A I believe Mr. Alan Roberts and a Mr. Al Mosher.

Q Did they speak in regard to the proposal before

the executive committee and the general membership con-

cerning organization of blowpipe shops?

A I only remember the general membership meeting

and they did speak.

Q What was their position with respect to that

issue?

MR. BOGEN: If your Honor please, at this

time, unless he is attempting to test Mr. Stack's credibility,

I am prepared to read into this record what took place as

reflected in the minutes and stipulated that the minutes

accurately reflect what took place.

I think if that is what Mr. Corsi wants to

accomplish we are prepared to do it in a shorter way rather

than asking Mr. Stack whether he recalls, et cetera.

THE COURT: I don't see how what the Inter-

national had to say on this subject matter could possibly

be that material to our inquiry.

MR. BOGEN: As a matter of fact, the deposition

of Mr. Carlo is in already.

THE COURT: What we are talking about here

is what did 28 do.

2 MR. BOGEN: I will be happy to read in
3 exactly what the minutes are.

4 THE COURT: They are in evidence. Why should
5 we read them in?

6 MR. BOGEN: At this point in time I would
7 object to further questioning of Mr. Stack with respect
8 to what transpired. I am prepared to stipulate that the
9 minutes of that meeting accurately reflect the positions
10 taken and the discussions had.

11 THE COURT: Youdon't have to do that because
12 you have already consented to their being received in
13 evidence. That is the concession.

14 MR. BOGEN: That concession apart, I would
15 object to further questioning of Mr. Stack which would
16 simply become cumulative particularly in response to his
17 responses that he doesn't recall and now we are memorializing
18 responses that he said he doesn't recall in the record.

19 MR. CORSI: The fact is as the minutes
20 reflect the International Association put forth an
21 alternative or suggested a means -- made a suggestion with
22 respect to Local 28's -- the executive board's objection
23 to organizing the blowpipe shops.

24 I would like to ask Mr. Stack if after that
25 proposal was put forth, if Local 28 or a representative of

2 Local 28 responded to the suggestion of the International.

3 THE COURT: And if he did, what would that
4 have to do with the issues here?

5 MR. CORSI: Well, your Honor, it seems to me --

6 THE COURT: And if it did respond, is that
7 in the minutes?

8 MR. CORSI: There is nothing in the minutes
9 to indicate a response to that.

10 THE COURT: All right. So as far as I am
11 concerned you can ask him the question, but I don't think
12 it has anything to do with our issue. Go ahead, ask him
13 the question.

14 Q Did the individuals from the International
15 Association --

16 THE COURT: No. We have already established
17 that they made the statement. Did anybody from 28 respond,
18 if you know?

19 MR. BOGEN: If your Honor please, I will
20 shorten this. I will stipulate a proposal was made. I
21 will stipulate that proposal was rejected for the reasons
22 stated in the minutes. They simply were not going to
23 organize at rates lower than the construction rates period.
24 It appears ad infinitum, ad nauseum in the Carlough depo-
25 sition. It appears in this minutes. As I said we are

beating a dead horse at this point unless there is something I don't understand.

THE COURT: Let me answer the question.

THE WITNESS: Could you repeat the question, Mr. Corsi?

THE COURT: Did anybody from the Local respond to the International's suggestion?

THE WITNESS: I believe just the membership or members, you know, present. I don't know of any officer that responded. It got rather heated after the International made their presentation and I believe, and I listened all that day and I heard those fellows holler no. They wouldn't accept the blowpipe industry at a differential in rate.

Q At the time that this proposal was before the executive board, were you aware of the racial composition of the mechanics, the individuals working in the blowpipe shops?

A I would say no.

Q When this proposal was before the executive board and the general membership, were you aware of how many shops -- if the executive board decided and the general membership then agreed to this, to organize blowpipe shops, do you know how many shops were in the industry at

2 that time, blowpipe shops?

3 A No.

4 Q Do you know or were you aware at that time
5 of approximately how many individuals were working in
6 blowpipe?

7 A No.

8 Q To the best of your knowledge, the discussions
9 at the general membership meeting concerning this proposal,
10 was there any discussion had on the racial composition of
11 the individuals working in blowpipe shops?

12 A Not that I recall.

13 Q Prior to this time, or about this time, were
14 you familiar or aware of the existence of Local 400 of
15 the International Association?

16 A No.

17 Q When did you first become aware of the existence
18 of Local 400?

19 A After the blowpipe industry was organized.

20 Q But prior to that time you had no communication
21 or contact with either members or officers of Local Union
22 400?

23 A That's right.

24 Q Local 400 at that time was an affiliated
25 sister local?

1 rgjw 6 Stack-direct 520

2 A I believe so. That's what I have been told.

3 Q Are you aware of what type of local Local
4 400 is?

5 MR. BOGEN: I am objecting, your Honor.

6 At this point I don't know where we are going or what
7 we are doing there with respect to any issue before this
8 particular Court. I think the question at this point
9 hasn't been connected. He exhausted the areas of the
10 organization.

11 I think that if the government is interested
12 in what 400 does or doesn't know, they have depositions
13 already in, they have scheduled the president of Local
14 400, they have other people involved connected with 400.

15 I just don't think Mr. Stack is the appropriate
16 person to develop this for my purpose.

17 MR. CORSI: Your Honor, I am attempting to
18 discern from Mr. Stack what his awareness, what his per-
19 ception of the sheetmetal industry in New York City was
20 at about that time.

21 I am trying to set a frame of reference for
22 what was done, the decision made by Local 28 with respect
23 to blowpipes.

24 THE COURT: Let me tell you that I think you
25 are drawing too big a picture for me to perceive. At this

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Stack-direct

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point I think we are going to spend. I am going to sustain your objection.

MR. BOGEN: Thank you, your Honor.

THE COURT: We are going to commence tomorrow morning at 10:00 o'clock.

MR. ADAMS: At 10:00?

THE COURT: At 10:00.

MR. GROSS: A full day tomorrow?

THE COURT: A full day.

MR. ADAMS: At this point I would like to make a request that we suspend Mr. Stack's examination in order to schedule Dr. Katzell as I had suggested yesterday, if that is agreeable with everybody and the Court.

THE COURT: I hope he is not going to be another one of your short witnesses, like Mrs. Joly.

MR. ADAMS: Your Honor, are you saying it was my short witness or Mr. Bogen's short witness?

THE COURT: No, he said she was going to be a short witness. Yes, Mr. Bogen.

MR. ADAMS: I can only promise what I am going to do.

THE COURT: All right, Mr. Bogen?

MR. BOGEN: I want to assure the Court that based upon the information, the little information we have

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1 Q Dr. Katzell, for the purpose of selecting
2 personnel for employment, have question and answer tests
3 using paper and pencil been found to be useful means of
4 selection?
5

6 A Yes, in many instances.

7 Q In what way are they useful?

8 A Well, they are useful insofar as it can be
9 established that performance on the test is correlated
10 appreciably with ability to perform a job.

11 In that event, an applicant's and candidate's
12 performance on a test may be taken as an indication of a
13 probability that he or she will be able to perform the
14 job at the appropriate level.

15 Q Are there any instances in which tests for
16 selection using paper and pencil would not be useful in
17 selecting people for employment?

18 A Yes. If the test was such that they were not
19 found to be associated or correlated with an ability to
20 perform the job.

21 Q Are there any instances when they would be
22 harmful?

23 A Yes. If a person's ability to perform the test
24 were hampered or handicapped in some way that wasn't relevant
25 to his or her ability to perform the job, in that case a

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Katzell-direct

2 concept is one of disadvantaged groups due to their back-
3 ground factors that hamper the ability of the average
4 individual in that group to perform on the test.

5 The other concept that we use is when such
6 tests are used in selection situations, that is where
7 applicants for a job or for schooling take tests and
8 where the test situation is such that there is the
9 possibility that members of the disadvantaged group would
10 tend to be excluded from these employment opportunities.

11 The phrase, the concept used there is one
12 of adverse effect or adverse impact.

13 The idea there being that by adverse impact
14 we essentially mean that the percentage of individuals
15 from the disadvantaged group who are likely to attain
16 some standard used in determining their qualifications,
17 that the percentage who failed to achieve that standard
18 is larger than the percentage of such persons in the
19 applicant population.

20 Q Dr. Katzell, in your experience and in your
21 research, have you found any identifiable groups which do
22 less well on paper and pencil tests?

23 MR. BOGEN: Objection, your Honor.

24 THE COURT: Sustained.

25 Q Dr. Katzell, in your research and in your

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2 experience with regard to adverse impact, have you found
3 or what have you found with regard to specific groups in
4 American society?

5 MR. BOGEN: Objection, your Honor.

6 THE COURT: Overruled.

7 A There is widespread experience that certain
8 groups do characteristically perform less well on the
9 average than most other groups, particularly the largest
10 such group in contemporary American society are the
11 blacks, the Hispanic Americans and the American Indians.

12 Q Is that a finding of yours that is shared by
13 others in your profession?

14 A Yes.

15 MR. BOGEN: Objection, your Honor.

16 THE COURT: He answered the question when he
17 said yes. I will let it stand.

18 MR. ROTHBERG: If I may, your Honor, I would
19 like at this time to object to this whole line of question-
20 ing about general testing as such. Title 7 very clearly
21 in the statute permits professionally developed tests.
22 It is not an issue before the Court or in any of the
23 contentions nor is it an issue that somebody else's test
24 or that testing generally has some kind of effect.

25 Under the statute we are permitted to give

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2 professionally developed tests, that is not an issue.

3 I think all the other discussion really is not
4 addressed to the issue at hand, namely our test.

5 MR. ADAMS: May I respond to that? The
6 statute --

7 THE COURT: You don't even have to respond
8 to it because what he is doing is laying a foundation
9 for specifics, I assume. Is that true?

10 MR. ADAMS: Yes, your Honor. I also am
11 saying that the statute and the regulations thereunder
12 do not permit the use of professionally developed tests
13 if it is established it has an adverse impact, not correlated
14 with anything.

15 MR. ROTHBERG: Well certainly we would agree
16 with you that we are talking about an adverse impact of
17 our tests, not tests given around the industry.

18 What I understand that. This is preliminary
19 and instructive, I assume.

20 Q Dr. Katzell, has your research and study in
21 the field of personnel selection indicated any reasons
22 for which may contribute to the adverse impact on certain
23 minority groups?

24 MR. BOGEN: Objection, your Honor.

25 MR. ADAMS: I am simply asking the question

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2 whether he found that.

3 MR. BOGEN: The question suggests that he
4 has and it suggests the answer and it assumes a state of
5 facts that is not in this record.

6 THE COURT: I must sustain the objection.

7 Q Have you done research or study in your field
8 of personnel selection, Dr. Katzell, on the reasons, if
9 any, for the adverse impact found on tests against
10 minority groups?

11 A Will you repeat the question?

12 (Record read)

13 A Yes.

14 Q What has that research and study that you have
15 done shown, if anything?

16 A Well, some of my personal research has shown
17 that the adverse impact of tests on the performance of
18 such disadvantaged groups is associated with certain
19 factors in their background like educational background,
20 socio-economic status and the like.

21 That kind of finding, incidentally, has also
22 been established in the inquiries of other responsible
23 investigators in this field.

24 Other factors that have been brought to like
25 in some of these investigations include biological cor-

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2 siderations or situational conditions, that is, things
3 that happen in the test situation itself where the tests
4 are being applied that seem to interfere with the test-
5 taking ability of candidates from such disadvantaged groups.

6 MR. BOGEN: I ask that the answer of the witness
7 be stricken at this point unless it is established as a
8 reference to his own personal research and studies. It
9 ought to be identified as to the basis of source of these
10 conclusions that he is offering as an expert.

11 THE COURT: I think a portion could be stricken,
12 but I would like him to identify the source of his material
13 with respect to any biological considerations and the
14 circumstantial situations.

15 Can you identify the source of that?

16 THE WITNESS: Yes. I can cite a couple of
17 references on that. If you will excuse me a moment, I
18 will consult some of my notes on that score.

19 THE COURT: Sure.

20 THE WITNESS: I would cite as a source a
21 standard reference where information of that sort can be
22 found, the following books: The authors are R.M. Dreager
23 and K.S. Miller. The title is "Comparative Studies
24 of Blacks and White in the United States", published by
25 the Seminar Press, 1973.

18 jksr

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2 Q Now, with respect to the March 1973 test what
3 information did you use to identify or what groups did
4 you study with respect to finding whether or not there
5 was an adverse impact?

6 MR. BOGEN: Objection, your Honor, with respect
7 to the use of adverse impact.

8 MR. ADAMS: I will withdraw the question.

9 Q What groups did you study in your analysis?

10 A They were the groups that were identified on
11 the computer printout as whites, blacks and hispanics.

12 Q And how were those groups identified, to your
13 knowledge?

14 A They were identified by the first digit of the
15 candidate's identification number. The code that ac-
16 companied the printout indicated that white candidates
17 had an identification number beginning with the numeral
18 5, blacks the numeral 2 and Hispanics the numeral 4.

19 MR. ADAMS: Can we stipulate, Mr. Rothberg and
20 Mr. Bogen, that that was the identification system used
21 in the computer printout produced?

22 MR. BOGEN: Yes, in behalf of 28, yes, your
23 Honor, we so stipulate.

24 MR. ROTHBERG: Yes, your Honor.

25 THE COURT: All right.

2 understanding, based on the information that you transmitted
3 that the way in which the test scores were used in
4 accepting candidates to the program was on the basis of
5 their composite score, so we wished to follow the same
6 practice as was used in making actual decisions.

7 The reason we chose to use the top fifty, the
8 top hundred and top half was that -- well, there were really
9 two reasons -- the first is that we understood that there
10 was no regular cutoff or pass - fail score, and that the
11 practice had been to go down the list from the top down
12 as far as needed to populate the program, and since there
13 were no regular cutoffs used, we selected these as
14 indicating the range within which the list might be gone
15 through in order to obtain the needed number of candidates.

16 Again, based on information you gave us,
17 ordinarily no fewer than 50 candidates were taken from
18 the list, so we went down to the top fifty as our first
19 level and that ordinarily, also, no more than between a
20 hundred and two hundred candidates were taken, depending
21 on the length of the list, and that is why if the list
22 was long, we cut off at the top hundred or the top two
23 hundred.

24 Incidentally, I am reminded, I think I made a
25 mistake in answering or I gave you an incomplete answer

1 to a previous question. I think I said that we use
2 as the scoring levels in analyzing the top fifty, the
3 top hundred and top half. We also used the top two
4 hundred in those instances where a large number of can-
5 didates were involved so that the top two hundred fell
6 somewhere between a hundred and the top half.
7

8 Q Dr. Katzell, did you perform --

9 A I haven't quite yet finished my response to
10 your earlier question.

11 Q I'm sorry.

12 A I interrupted myself here to give you a
13 clarification.

14 Another reason why we used these particular
15 levels is that the specific tests that are used and have
16 been used in the past at various testing sessions have
17 varied from session to session and therefore seemed to us
18 that the best way was always to use some relative ranking
19 because the actual scores might differ from one time to
20 the next, depending on which test happened to be employed
21 for the purpose.

22 Q Did you perform this analysis for all eight
23 test batteries that you studied?

24 A Yes, we did.

25 Q What other analysis did you perform?

1
2 A Well, I had explained earlier our procedure
3 of analyzing the percentage of members of these various
4 groups who fell within these score ranges each time.

5 Then we applied to those percentages the chi
6 square test of statistical significance to ascertain
7 whether any differences that were observed in the percen-
8 tages of whites and non-whites were sufficiently large
9 in view of the size of the sample to be regarded as
10 unlikely to be a chance difference.

11 We then, in order to aggregate the overall
12 picture across the eight testing sessions, combined the
13 chi score results so that we had, as it were, a picture
14 of the statistical significance of differences between the
15 whites and the non-whites as aggregated across all eight
16 experiences, all eight sessions.

17 The objective there was to get, as it were,
18 an overall picture rather than taking a look at each of
19 these sessions separately.
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2 Q What did you find from your overall analysis,
3 the aggregate of the eight tests?

4 A Yes. The overall analysis showed that the
5 non-whites, the percentage of non-whites appearing in the
6 top 50 was significantly smaller than the percentage of
7 whites.

8 The percentage of non-whites appearing in the
9 top 100 scores, among the top 100 scores, was significantly
10 smaller than the non-whites.

11 In those instances where we went down as far
12 as 200, the percentage of non-whites in the top 200 was
13 significantly smaller than the percentage of whites, and
14 the percentage of non-whites in the top half of the scores
15 was significantly smaller than the whites.

16 Q To clarify --

17 A I wonder if the stenographer can read that
18 answer back if I may? I want to hear it to make sure it
19 is accurate.

20 THE COURT: Read it back.

21 (Record read)

22 Q Dr. Katzell, the answer that you just gave
23 was based on your analysis of the aggregate of all eight
24 tests?

25 A That is correct.

1 arjw 2
2 Q And your testimony with regard to the significance,
3 could you clarify what that significance means?

4 A Yes. By significance we mean that the ob-
5 tained difference in percentage, the observed differences
6 in percentage, was sufficiently great that it is likely
7 to have occurred by chance on the basis of random sampling
8 results no more than one in twenty.

9 Now, these particular instances, these aggregate
10 results that we cited, the level of significance was even
11 more extreme than the one in twenty. Actually the results
12 I cited were statistically significant at a level such
13 that you could say they would be due to chance no fewer
14 than one chance in 100, so that we regard these as highly
15 stable, highly dependable differences.

16 Q Dr. Katzell, you testified that you analyzed
17 each of the eight tests individually; is that correct?

18 A Yes.

19 Q Did you find any evidence of adverse impact
20 in any of the individual tests?

21 MR. BOGEN: Objection, your Honor.

22 Q What did you find, doctor?

23 A In all eight instances the number of non-whites
24 the percentage I am sorry, the percentage of non-whites
25 who fell respectively in the top 50, the top 100 such as

1 arjw 3

2 we previously described, was smaller than the percentage
3 of whites.

4 However, the difference in those percentages
5 was not always statistically significant.

6 In the April 1968 testing none of the differences
7 was statistically significant. That is, although there
8 was a smaller percentage of non-whites than whites in the
9 top 50, the top 100 and half, that difference was not
10 sufficiently large in view of the size of the sample for
11 us to consider that as beyond the chance possibility
12 level, using our conservative tests of significance.

13 Q Doctor, with regard to --

14 THE COURT: He hasn't finished his answer.
15 You asked with respect to eight tests, he is going to tell
16 about eight tests.

17 A Now, with respect to the other seven of those
18 testing sessions, in those instances again the percentage
19 of non-whites falling within the scoring groups was in
20 every instance smaller than the percentage of whites and,
21 in those seven instances, at least at some of the score
22 levels, the difference in percentage was statistically
23 significant. That is true in every one of these seven
24 instances that I am citing.

25 Q Doctor, can you explain why on your overall

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2 certain action in the issues before him at that time.
3 That is our argument.

4 THE COURT: Mr. Bogen, I am going to permit
5 the doctor to testify as to what his opinion is and the
6 basis for his opinion and this is all within the framework
7 of the standards that he has used. You obviously have
8 the opportunity to have your experts say otherwise.

9 MR ADAMS: The question is predicated on --

10 THE COURT: Certainly.

11 MR. ADAMS: May I say it again?

12 On the basis of your analyses, Dr. Katzell,
13 do you have an opinion as to the likelihood of there being
14 an adverse impact on non-whites if the same kinds of tests
15 are given to the same persons in the same circumstances
16 as occurred in the eight tests that you have studied?

17 A Yes, I believe that under such circumstances
18 there would be --

19 Q The answer is yes or no.

20 A Yes.

21 Q What is your opinion?

22 A It is that under the circumstances you indicated,
23 the test would be likely to have an adverse impact on non-
24 whites.

25 Q What is the basis for this opinion?

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2 The basis for this opinion is that we are
3 extrapolating the experience acquired over the eight test-
4 ing sessions that we studied thus far.

5 Those data show beyond a reasonable doubt that
6 the various scoring levels examined, and also in terms of the
7 averages or medians examined, that the non-whites will
8 score less well than the whites.

9 We would therefore expect that if the same
10 test with the same kinds of people under the same circum-
11 stances were to be conducted, to be used, the same
12 results would occur.

13 Q Are you basing your last answer on the
14 employment of the statistical significance standard?

15 A Yes, I am.

16 MR. ADAMS: May I take 30 seconds?

17 THE COURT: Yes.

18 (Pause)

19 MR. ADAMS: No further questions.

20 MS. GROSS: The City concurs.

21 MR. TUMINARO: No questions, your Honor.

22 MR. BOGEN: We would have a request of Mr.
23 Adams and one of the Court.

24 With respect to Mr. Adams, I request that any
25 affidavits or written statements that were taken of the

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1 I was informed by Ms. Gross that the witness, Mrs. Joly
2 would not be available until Thursday morning with respect
3 to the information and her appearance in Court. I said
4 I was satisfied so long as the information was given before-
5 hand, subject to the Court's approval.
6

7 THE COURT: That is all right.

8 MR. BOGEN: Thank you, your Honor.

9 MR. CORSI: I would like to recall Mr. Stack.
10

11 E D W A R D S T A C K , having been previously
12 sworn, resumed and testified further as follows:

13 THE CLERK: You are still under oath, Mr.
14 Stack.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. CORSI:

17 Q Mr. Stack, I believe that on Wednesday when
18 we adjourned for the day you had testified -- prior to
19 that time -- you had testified that you had been at the
20 general membership meeting held on January 6th of 1965
21 and you had reviewed the minutes of that meeting; is that
22 correct?

23 A Yes.

24 Q You also testified that having looked at those
25 minutes, there was in fact a proposition put to the membership

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to organize the blowpipe shops in New York City, is that correct?

A Yes, sir.

Q The testimony was that the proposition was defeated.

Subsequent to that vote by the membership, did you or any officer of Local 28 remain involved with the organization efforts by the IA to organize the blowpipe shops in New York?

A No.

Q Was the result of that meeting, the vote of that meeting, was that ever transmitted to the IA?

A I don't know.

Q Was a protest ever made to the IA concerning the organization of the blowpipe shops in New York?

MR. BOGEN: Objection.

THE COURT: Sustained.

Q Mr. Stack, I would like to show you Exhibit 6 in evidence. Will you please review that letter from Mr. Mel Farrell to Mr. Edward Carlo, President of the International Association. The date on this letter is January 11, 1965.

Have you had an opportunity to review that letter?

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A I read it.

Q At the time that this letter was drafted and sent to the International, did you participate in the formulation of this letter?

A No.

Q Was the topics discussed in this letter ever discussed at an executive board meeting?

A No, not that I recall.

Q Was the topic of this letter discussed with you or any of the officers of the International?

A Not with me.

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Q I direct your attention to the last paragraph of that letter. Would you read that last paragraph, please.

A Why don't you read it? I have a little trouble stumbling over some of those words.

Q "On behalf of the officers and members of Local Union 28 I vigorously protest the action of our International Association in subverting the interests of our local union, the infringements on the traditional rights of the members of Local 28 in manufacturing and erection of duct work in connection with blowpipe and dust collecting systems, the erection of spray booth systems, smoke houses, ovens and other areas of jurisdiction, and the possible effect of the action of our International on the future collective bargaining agreements with our contractors. I further respectfully request that a meeting with a committee from this local union be granted the opportunity to meet with our International Association officers in Washington to further explore the organization of the blowpipe industry."

Does this refresh your recollection with respect to any further participation by representatives of Local Union 28 with the organization of blowpipe shops in New York?

A No.

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2 Q I -- it you did not participate in any further
3 meetings?

4 A That's correct.

5 Q Do you know if Mr. Farrell did?

6 A I don't know.

7 Q At the general membership meeting that was held
8 on the 6th, was there any discussion with respect to
9 limitations on duct work that would be done by blowpipe
10 shops if and when they were organized by either Local 28
11 or the International Association?

12 A It's possible that Mr. Alan Roberts outlined
13 something like that at the meeting. For me to recall the
14 exact text of that meeting at this time I couldn't do it.

15 Q In preparation for that meeting did Local Union
16 28 send out any written material with respect to what would
17 be discussed at that meeting?

18 A I don't --

19 MR. BOGEN: Objection, your Honor. It has
20 been established that the meeting took place sometime in
21 '65. Mr. Stack indicated he didn't recall the meeting,
22 he was not an officer at that particular time. It is
23 unfortunate that we don't have a continuity of his prior
24 testimony, but these questions and this approach were
25 developed on the first go-around with Mr. Stack, and I

am objecting to the question now as being repetitive and argumentative.

THE COURT: I will let him answer it if he knows.

THE WITNESS: Repeat the question.

[Question read.]

A I don't recall.

Q I direct your attention to the first paragraph of Page 2 of that letter. Would you just read it to yourself?

[Pause.]

Q Having reviewed this letter, do you remember receiving any written material concerning a Schedule A or a Schedule B to a standard form of blowpipe agreement?

A No.

Q Do you know what this refers to, Schedule A and Schedule B?

A I am not familiar with the blowpipe business.

Q I refer you to the first paragraph, the first page of the letter.

Having read that, does that refresh your recollection with respect to A or B, Schedules A or B?

A It does not.

Q Are you aware that there was discussed a 75 foot

limitation on duct work that would be performed by blowpipe shops?

A I am not aware.

Q Do you remember whether or not the blowpipe shops were ultimately organized by the International Association?

A I couldn't answer that question.

Q You do not know whether the blowpipe shops were organized by the International?

A They were, yes.

Q And when they were organized, to your knowledge, were they given a new charter?

MR. BOGEN: Objection, your Honor. At this time I object to the question and ask that the testimony with respect to 400 be stricken. There is no foundation whatsoever. As a matter of fact, based upon the testimony given by Mr. Stack the other day and today, based upon the Carlough deposition which is before his Honor as evidence, there is clear indication who organized, what was done, and it had nothing whatsoever to do with 28.

With respect to the earlier questions addressed to Mr. Stack, apparently the Government attempted to establish some relationship between it. At this point the relationship has fallen on its face. I ask that the

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2 testimony be stricken and no further questions be directed
3 in that area.

4 THE COURT: I will direct that no further
5 questions be directed in that area. I will not direct
6 that any other testimony be stricken.

7 MR. BOGEN: Thank you, your Honor.

8 MR. CORSI: Your Honor, if I may just respond
9 briefly, we have already established, it is in evidence --

10 THE COURT: Mr. Corsi, I have already made my
11 ruling.

12 MR. CORSI: Yes, your Honor.

13 Q Mr. Stack, since you have been an officer or
14 a business agent -- and I presume that takes us back through
15 1962, thereabouts --

16 A '67. '62, the Executive Board.

17 Q The Executive Board?

18 A Yes.

19 Q Thank you. Has Local Union 28 had jurisdictional
20 disputes with any other affiliated local union of the
21 International?

22 A It is possible.

23 Q Has it had any with the Blowpipe Division of Local
24 400?

25 A It is possible.

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1 6 jksr

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2 Q Have you been involved in any dispute?

3 A No.

4 Q Has Local Union 28 submitted any complaints to
5 the International that the work jurisdiction of 28 has
6 been infringed by members of Local 400, the Blowpipe
7 Division?

8 MR. BOGEN: Objection, your Honor. I thought
9 consistent with your ruling that the 400 matter was laid
10 to rest.

11 MR. CORSI: Your Honor, I think that was with
12 respect to the organizational activities.

13 THE COURT: If he knows if there have been any
14 complaints that they filed with the International, I think
15 he say that.

16 A I don't know.

17 Q Are you aware of the racial composition of Local
18 400, Blowpipe Division?

19 A No.

20 Q Mr. Stack, I believe you testified that in July
21 of last year you became president. Who was your predecessor
22 in that office?

23 A Daniel Pasquinnucci.

24 Q And how long did Mr. Pasquinnucci hold that position,
25 do you know?

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2 Q When was the last occasion that apprentices
3 were placed?

4 A I believe the last group of apprentices that
5 were appointed.

6 Q When was that?

7 A October.

8 Q During the time that you have been either a
9 business agent or a member of the executive board or
10 president, have any members of sister affiliated local
11 unions attempted to or in fact transferred into Local 28?

12 A Yes.

13 Q What is the procedure that a member of an
14 affiliated sister local would have to follow in order to
15 effectuate a transfer into 28?

16 A I believe Mr. O'Reilly's testimony who is the
17 secretary of the organization, told you on Tuesday that
18 procedure.

19 Q I am asking you.

20 A I just want to make sure that you understand
21 my answer now.

22 The procedure is that the member present a
23 transfer card to the executive board.

24 Q That is the only way that a transfer can be
25 effectuated?

1 arjw 2

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2 A Yes.

3 Q Does an officer or a business agent of Local 28
4 have the authority to approve or deny a transfer from a
5 sister affiliated local without first having the individual
6 submit the transfer card to the executive board?

7 MR. BOGEN: I object to the question, your
8 Honor.

9 THE COURT: What is the objection?

10 MR. BOGEN: The objection is that in the second
11 portion it assumes a state that if they did get this, there
12 would be approval. That is not in the record at all.

13 I don't have any objection to him asking
14 whether the official could do it or not do it, but this is
15 a pregnant question, if you would, that he could do it
16 under these circumstances. That is an improper question,
17 your Honor.

18 THE COURT: Sustained as to form only. Ask
19 it again.

20 Q Does the officer or business agent of Local 28
21 have the authority to approve or deny a request for a
22 transfer?

23 A No.

24 Q If a request for a transfer were made to a busi-
25 ness agent or an officer of Local 28, what would have to happen

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2 in order for that transfer to be effectuated?

3 MR. BOGEN: Objection.

4 THE COURT: Sustained.

5 Q Do you know of any occasions where an officer
6 or a business agent of Local 28 has denied or approved a
7 transfer?

8 A No.

9 Q Do you know whether all requests for transfers
10 that have been made either to an officer -- assuming a
11 request for a transfer had been made, that all requests for
12 transfer have been submitted to the executive board?

13 A Yes.

14 Q Could you explain that? Possibly it was my
15 fault that way I phrased the question.

16 A All transfers must be submitted to the executive
17 board from other local unions.

18 Q Does Local Union 28 have any special policy --
19 does it have a policy with regard to transfers?

20 A No.

21 Q Does the International have any policy with
22 respect to transfers?

23 A They have rules.

24 Q Are you familiar with those rules?

25 A Some, yes.

2 that I know of is that the member transferring to Local 28
3 must be a resident of the City of New York.

4 That was handed down to us quite a few years
5 back by the International Association on appeal.

6 Q Does Local 28 have any policy regarding former
7 membership in Local 28 as a prerequisite to transfer?

8 A Not really. A member or man who was a previous
9 member of the local union does transfer back in without
10 any problems and so on. He deposits his card and that is
11 that.

12 Q What problem would a non-member have?

13 A Other than the residential requirement, I don't
14 know of any other real problem.

15 Q Are individuals who transfer, are they required
16 to pay any differential, if there is a differential, between
17 the initiation that they originally paid to their original
18 local and the initiation fee that presently is in existence
19 for Local 28?

20 A I believe so with respect of being under a five
21 year member.

22 I am not familiar with that area entirely because
23 that is the duty of the financial secretary.

24 Q But it is your understanding or belief that the
25 individual has five years membership in a local he does not

1 have to pay any differential?

2 A That may be.

3 Q Mr. O'Reilly the other day testified that Local
4 28 has a system called identification slips. Would you,
5 using his term, describe your understanding of that term?
6

7 MR. BOGEN: Objection, your Honor. I think we
8 went into this thoroughly with Mr. O'Reilly. I don't know
9 what the purpose is of getting another witness to go over
10 this type of thing.

11 MR. CORSI: Your Honor, I am attempting to get
12 his perception of what an identification slip is.

13 THE COURT: We went over 90 percent of this
14 the other day and I have been waiting for you to make an
15 objection on the ground it is repetitive.

16 MR. BOGEN: The point is I was trying to follow
17 the questioning and there may be some new areas explored.
18 I don't know whether there is. I don't think there is any
19 significance.

20 THE COURT: I will let him answer the question
21 but if you continue to go the way you are going, sua sponte
22 I am going to cut you off. That is all in the record already.

23 Q Would you answer the question, please.

24 A May I have the question read.

25 (Question read)

2 A It identifies the member who is referred to
3 work.

4 Q How is it that an individual working on an
5 identification slip, how is it that he comes in and works
6 under the jurisdiction of 28?

7 MR. BOGEN: Objection, your Honor. Consistent
8 with your Honor's ruling, this again has been explored with
9 Mr. O'Reilly.

10 THE COURT: I will let him answer this question
11 because I think his understanding or his answer to the last
12 question was somewhat different than Mr. O'Reilly's.

13 MR. CORSI: Thank you, your Honor.

14 A May I have the question again?

15 MR. CORSI: Would you read the question, please?

16 (Question read)

17 A He is referred by his own local union.

18 Q How is it that his local union would refer him
19 to Local 28, if you know?

20 A What I give you now is strictly conjecture at
21 this point because I imagine there is some communication
22 somewhere to that other local union.

23 Q Do you know if it is a communication initiated
24 by Local 28 or by the other affiliate?

25 A It could have been initiated by Local 28, yes.

Q Who would be the individual from Local 28 that would initiate that contact?

A It could be any one of three officers.

Q Which three officers would they be?

A Two secretaries and the president.

Q That would be the recording secretary, the financial secretary and the president?

A Correct.

Q To your knowledge, was any contact ever made to Local Union 400, the blowpipe division, to request men to work on identification slips?

A Not to my knowledge.

Q I take it the International, I believe there is testimony to this effect, the International has a designation for types of locals; Local 28 is a building trades local?

A That is correct.

Q Do you know what the identification is for the blowpipe division of Local 400?

A No.

Q Mr. Stack, do you know when the Joint Apprenticeship Committee last gave an apprenticeship examination?

MR. BOGEN: Objection, the record is replete with testimony by two other people. You have a stipulation

1 jksr

Stack - direct

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2 THE COURT: You are still under oath, Mr. Stack.

3 Glad to see we have got the batting order in
4 right position here.

5 MS. GROSS: I am sorry I was late, your Honor.

6 THE COURT: All right.

7 BY MS. GROSS:

8 Q Mr. Stack, you testified you had been an apprentice
9 in Local 28 JAC's program when you were an apprentice.
10 Did you attend apprentice classes?

11 A Yes.

12 Q How often? Was there a fixed schedule of classes?

13 A One day every two weeks.

14 Q And you were an apprentice for four years and
15 you graduated to be a journeyman?

16 A Right.

17 Q Did you ever fail a subject in the apprentice
18 school?

19 A Not that I recall.

20 Q Were you ever left back a term?

21 A No.

22 Q Or not show up on the job or something like that?

23 A No.

24 Q To your knowledge, then, your progress in the
25 school was satisfactory during the four years?

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Stack - direct

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A I have a certificate to that effect.

Q And during the time that you were an apprentice, Mr. Stack, I assume you worked for sheetmetal contractors?

A Yes.

Q Can you recall approximately how many you worked for?

A One.

Q One during the entire four years?

A That's right.

Q And after you became a journeyman, I think you testified you had been a member of the union for 20 or 21 years at this point, and I assume you worked as a journeyman until you were elected as president?

A Yes.

Q Do you still work as a journeyman?

A No.

Q I just wasn't sure. That is a full time position being president?

A That's correct.

Q During these twenty years, do you remember, can you recall approximately how many sheetmetal contractors you worked for?

A Maybe ten.

Q To your knowledge, Mr. Stack, has any sheetmetal

1 3 jksr

Stack - direct

743

2 contractor for whom you worked either as an apprentice
3 or a journeyman ever complained about the quality of
4 your work?

5 A No.

6 Q Is there an advantage, Mr. Stack, for sheetmetal
7 workers to join Local 28?

8 MR. BOGEN: Objection, your Honor.

9 MR. GROSS: May I know the grounds for the
10 objection?

11 THE COURT: I can't hear you, Mr. Bogen.

12 MR. BOGEN: I am sorry. Objection, your Honor.

13 THE COURT: What is the ground for it?

14 MR. BOGEN: The ground for it is whether or not
15 there is a -- the question was, was there an advantage or
16 not? I think it is an improper question.

17 THE COURT: I think he can answer that question.

18 Is there an advantage, Mr. Stack?

19 THE WITNESS: Yes.

20 Q And could you tell us what that advantage, or
21 if there is more than one, what the advantages are?

22 A To be part of the collective bargaining unit
23 regarding wages, welfare, pension credits and things of
24 that ilk.

25 Q Are there any other advantages you can name?

331

1 arjw 2

Stack-direct

2 Q Is there seasonal unemployment in the sheet-
3 metal industry, Mr. Stack?

4 A Yes.

5 Q Do you recall what months the unemployment is
6 usually at its lowest level?

7 A The cold months.

8 Q When would it be at the highest level?

9 A The summer months.

10 Q During this period of time of high employment,
11 seasonal high employment, what percentage of Local 28
12 members are commonly unemployed?

13 A I couldn't answer that.

14 Q Does the union guarantee its members full
15 employment?

16 A No.

17 Q Does the union use its best efforts to secure
18 employment when work is available?

19 A Yes.

20 Q Is Local 28 affiliated with the Building and
21 Construction Trades Council, Mr. Stack?

22 A Yes.

23 Q What is the Building and Construction Trades
24 Council?

25 A It is a group containing approximately 30 trades.

1 arjw 3 Stack-direct

2 Q Local 28 belongs as a trade or are there other
3 locals which together with Local 28 belong to this council
4 as sheetmetal trades?

5 A We belong as a trade.

6 Q Separately belong as a trade?

7 A That is right.

8 Q Does Local 28 contribute to the Building
9 Construction Trades Council?

10 A Yes.

11 Q Does it send a delegate to that council?

12 A Yes.

13 Q Who is the delegate?

14 A All the full-time officials of the local union.

15 Q Meaning the elected officers?

A Yes.

16 Q Excluding or including the business agents?

17 A Including.

18 Q So the entire executive board of Local 28?

19 A No.

20 Q The executive committee of Local 28?

21 A No.

22 Q All the elected officials including the business
23 agents who are delegates to it?

24 A Full-time officials of the local.

25 Q Would you name those by title?

1 arjw 4

Stack-direct

2 A The financial secretary, the recording secretary,
3 myself as president and business manager, and the six
4 business agents.

5 Q Thank you.

6 Do those delegates participate in meetings
7 held by the Building and Construction Trades Council?

8 A Yes.

9 Q How often are such meetings held?

10 A Once a month.

11 Q What things are discussed at those meetings?

12 A Jurisdiction, work opportunities, the internal
13 problems of the Building Trade Council, economic problems.
14 I would leave it at that.

15 Q Is the Building Trades Council affiliated
16 with the AFL-CIO?

17 A Yes.

18 Q Have you personally attended any of these
19 meetings you described?

20 A Yes.

21 Q From the time you were a business agent?

22 A Yes.

23 Q Have you heard any discussions at any of these
24 meetings concerning the employment of minorities in the
25 construction trades?

1 arjw 5 Stack-direct

2 A Not that I can recall.

3 Q Is Local 28 affiliated with the New York Board
4 of Urban Affairs?

5 A No.

6 Q Is the Buildings Trades Council affiliated
7 with the New York Board of Urban Affairs?

8 A Yes.

9 Q Yes?

10 A Yes.

11 Q Are you personally aware, Mr Stack, of any
12 federal or city regulations which require contractors to
13 hire minority workers?

14 A I have an awareness of it. What the text --

15 Q I am not asking you as to the content but if
16 you are aware generally of the requirement.

17 A Yes.

18 Q To your knowledge are you aware -- you said
19 you were aware that there are some regulations which apply
20 to contractors about minority opportunities. I ask you
21 if you are aware of that fact in regard to contractors in
22 signed agreements with Local 28?

23 A Yes.

24 Q What, if anything, has Local 28 done to provide
25 minorities to these contractors?

1 arjw 6

Stack-direct

2 MR. BOGEN: Objection, your Honor. It suggests
3 or implies a basis for that requirement that we do supply
4 or haven't supplied, your Honor.

5 MS. GROSS: I am asking what if anything he
6 has done. We already have had testimony on the record
7 as to how employees received work, the contractors call the
8 union or the business agents et cetera.

9 I am now asking if he is aware that the con-
10 tractors have an obligation and he said he has and I asked
11 what if anything Local 28 has done to supply men to meet
12 those obligations.

13 MR. BOGEN: This question assumes there is
14 an obligation of Local 28 to assist or in some way comply.

15 MS. GROSS: That is not my question.

16 MR. BOGEN: The question certainly does assume
17 that and it is objectionable.

18 THE COURT: I would rephrase it so it doesn't.

19 Q Has any contractor ever advised you, Mr. Stack,
20 that Local 28 was not sending it sufficient minorities to
21 enable it to meet its obligations?

22 A Not to my knowledge.

23 Q Not to your knowledge? Has this ever been the
24 subject matter of a discussion of the executive board or
25 any other meeting that you attend as a representative of

Local 28 or as a participant in committees?

A Yes.

Q In what context did such discussion arise?

A It arose as the contractor's requirement to supply minorities to the job sites at any number of meetings. It has been discussed throughout the industry.

MR. BOGEN: Excuse me, I didn't hear the answer. May we have it read?

THE COURT: Read the answer.

(Answer read)

Q So it wasn't only a matter made personally known to you but it was widely known that the contractors had obligations and I am asking you, Mr. Stack, whether the contractors have ever expressed at any of those meetings or any of the discussions at any of those meetings, the fact that the contractors could or could not meet their obligations in terms of minority employment?

A It was discussed. I can't answer the rest of your question.

Q It was discussed?

A Right.

Q Do you know how many minorities are now members of Local 28?

A I have no idea.

1 9 jksr

Stack - cross

2 Q At any time, to your knowledge, has Local 28
3 ever had a condition or restriction in connection with
4 organization of non-union shops regarding race, color or
5 national origin?

6 A No.

7 Q Do you know at this time of any non-union
8 sheetmetal contractor whose employees or whose principals,
9 the operators, are either black or Spanish surnamed?

10 A No.

11 Q This morning, in connection with some questions
12 and areas discussed with Mr. Corsi, you discussed the
13 concept or the term "jurisdictional dispute." Do you
14 recall that?

15 A Yes, sir.

16 Q During your term as a business agent and now as
17 the president, have there been jurisdictional disputes
18 between Local 28 and other locals?

19 A Yes.

20 Q Approximately during this period how many
21 jurisdictional disputes would you know of?

22 A At least a dozen the last six months.

23 Q And prior to that period of time?

24 A Hundreds.

25 Q And with respect to what locals or trades did those

1 arjw 4 Stack-cross

2 Q Pa.?

3 A Not to participate.

4 Q Why was that decision made?

5 A Because it called for something other than
6 what we thought or the local union thought was the best
7 for the local union.

8 Q What did it call for and what was unacceptable
9 about what was called for?

10 A The criteria primarily because of the apprentice
11 program which we had at that time. It negated our program.

12 Q In other words, you are saying that it called
13 for some program that was at variance with the program
14 that you already had in effect?

15 A Yes.

16 Q In what respect was there a variance unacceptable
17 to Local 28?

18 A I think in the concept of training people to
19 do sheetmetal and then letting them go after a period of
20 time on the job site.

21 The one thing Local 28 has always taken a pretty
22 much firm position is we don't want to train people to have
23 them go out in the industry and be non-union people.

24 Q Anything that would have prevented Local 28 from
25 accepting these people as union members?

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Carlough-direct
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Stack-cross

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2 A The training requirement at that point.

3 Q Do you mean your own training requirement?

4 A The training requirement because you don't
5 put the people into the mainstream half trained. You train
6 them properly and then put them in the main stream.

7 Q Would Local 28 have been willing to take such
8 people into their apprentice program on an advanced basis?

9 A At that time there was a policy not to.

10 Q Were you aware that other unions also had
11 apprenticeship training programs?

12 A I am aware.

13 Q That other members of the Buildings Trades
14 Council nevertheless did join the New York plan notwithstand-
15 ing their own program?

16 MR. BOGEN: Objection, your Honor.

17 THE COURT: I don't think it is relevant.

18 MR. TUMINARO: Local 28 took a position which
19 I believe was unique in this regard to this plan and I am
20 simply trying to explore whether any of the reasons why
21 they chose not to participate relates to the issues in this
22 case.

23 THE COURT: The Court will take judicial notice
24 of the fact that they took a unique position.

25 MR. TUMINARO: I am satisfied, your Honor.

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Stack-cross

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2 (Question read)

3 A I don't know what the term non-union means.

4 Q A person, a worker, one who purports to be a
5 worker who is not a member of Local 28, either an apprentice
6 or a journeyman. That is someone who we shall for this
7 purpose denote as a non-union member.

8 A The position is they don't work with a non-union
9 man.

10 Q Am I to understand that if the man -- that the
11 Local 28 men will refuse to work at this point?

12 A It could be, yes.

13 Q Do you recall any occasions when such a situation
14 developed in the past few years?

15 A No.

16 Q Do you recall whether an occurrence of that
17 kind took place on the Harlem State Office Building when
18 the Local 28 members were working there?

19 A No.

20 MR. TUMINARO: I have no further questions.

21 THE COURT: All right, we will suspend at
22 this time until 2:00 o'clock.

23 (Luncheon recess taken until 2:00 p.m.)

24 endtendb

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Stack - redirect

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A F T E R N O O N S E S S I O N

[2:05 pm.]

E D W A R D S T A C K , resumed.

THE CLERK: You are reminded you are still under oath.

REDIRECT EXAMINATION

BY MR. CORSI:

Q Mr. Stack, in your discussions with Mr. Bogen, the questions and answers with Mr. Bogen, during Mr. Bogen's examination you stated, I believe, and please correct me if I am mis-stating your position, that you do not know of any non-union shops that employ non-whites or who are owned by non-whites. Is that a correct statement?

A Yes.

Q That is a correct statement with respect to the present?

A That is correct.

Q What about with respect to time in the past?

A Same answer applies.

Q That is that you just don't know of any shops that have either non-white owners or non-white employees?

A That's correct.

Q And that was the case even while you were a business agent, member of the Executive Board, what-have-you?

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A That's correct.

Q What was your territory when you were business agent?

A Queens.

Q Did you ever have any other territory?

A Brooklyn.

Q Mr. Stack, have you ever heard of the Brumar Sheetmetal Company?

A Yes.

Q Do you know where that is located?

A No.

Q Would Brooklyn refresh your recollection with respect to that ?

A I never visited the shop. I don't know where the shop is located.

Q Did you ever have contact with that shop while you were business agent?

A Yes.

Q When was that, sir?

A They did the job over in the Queens Shopping Mall.

Q Could you give an approximation as to when that was?

A About a year and a half ago.

Q That was the first and only contact you have had

MR. BOGEN: Objection, the document speaks for itself.

THE COURT: Yes, sustained.

Q Was this provision negotiated by the Union with the Employers Association?

MR. BOGEN: Objection. It is in the collective bargaining agreement by definition.

THE COURT: Sustained.

Q Mr. Stack, you testified in cross examination, Mr. Stack, that the union would not work with non-union people, is that correct?

A Yes.

MR. BOGEN: I didn't hear the answer but that is not the testimony. The testimony was that Local 28 members would not work with non-members.

THE COURT: All right. That is also right, isn't it?

THE WITNESS: Yes.

Q Mr. Stack, I show you again Plaintiff's Exhibit 55 and direct your attention to Article 4 on page 3, Section 1.

Have you read it?

A Yes.

Q Mr. Stack, if an employer hired a non-union

1 arjw 5 Stack-redirect 796
2 person, what would the union members on the job site
3 do?

4 A I don't know.

5 Q You have worked on job sites over 20 years
6 you testified earlier. Were there any occasions during
7 those twenty years when the employer hired a non-union
8 person?

9 A I couldn't answer that. I don't know.

10 Q You never knew in your experience during the
11 twenty years?

12 A In my experience, that is right.

13 Q The employers never hired a non-union person
14 to your knowledge during that time?

15 MR. BOGEN: Objection, the same question.

16 THE COURT: I will let him answer.

17 A Not to my experience.

18 Q Mr. Stack, in March and April of '74 there
19 is evidence in this case of shutdowns on various job sites
20 throughout the city, in which Local 28 members walked off
21 sites or were prevented from going on sites by community
22 demonstrations. Are you familiar with that?

23 MR. BOGEN: Objection, no such thing in this
24 record whatsoever with respect to shutdowns or Local 28
25 walked off the jobs.

MR. BOGEN: May I have Plaintiff's Exhibit 2 for a moment?

Q Mr. Stack, a few minutes ago Mr. Corsi showed you Plaintiffs' Exhibit 2 in an attempt to refresh your memory with respect to what appears to be some type of jurisdictional dispute discussion with Local 28 and 400. Do you recall having seen this exhibit a few minutes ago?

A Yes.

Q And do you recall in response to questions thereafter by Mr. Corsi that you didn't recall such a grievance and that you suggested or you believed that Mr. Weigel was in error in listing your name that appears in Exhibit 2, is that correct?

A Yes.

Q Is there any reason or basis for your suggesting or stating that Mr. Weigel was in error in including your name?

A No, I can't speak for Mr. Weigel, but I know I wasn't there. I generally remember the grievances I attend because they are very important part of the job I have or had at that time.

Q And now, at that time in 1967, what was your jurisdiction or territory as a business agent?

A What is the date on that?

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11 jksr , Stack - recross

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Q August 16, 1967.

A At that time we changed areas, I think around the 15th, and I was the business agent in the Bronx area prior to being the business agent in the Brooklyn area, in that change of time or that sequence.

Q At about that particular time who was the business agent in Queens, if you know?

A Leo Moletti.

Q And did you have anything to do with Queens at that particular time or about that particular time?

A No.

Q Would it have been the business agent's business or affairs to handle what appeared to be or what was claimed to be a jurisdictional dispute in his territory?

A Yes.

Q In the recent go-around of questioning MS. Gross again asked you what your understanding, your concept was with the New York Plan. Are you familiar with the New York Plan as such, Mr. Stack?

A The only thing I know about the New York Plan, it provided for trainees.

Q Do you know what it provided with respect to trainees?

A I have no idea of the numbers or the percentages

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1 arjw 1

2 T H O M A S C A R L O U G H , called as a
3 witness on behalf of the Government, being first
4 duly sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. CORSI:

7 Q Will you state your home address?

8 A 56 Shelborne Lane, New Hyde Park, New York.

9 Q Are you a member of a trade union?

10 A Yes.

11 Q What union is that?

12 A Local 28, Sheetmetal Workers International
13 Association.

14 Q How long have you been a member of Local Union
15 28?

16 A As a journeyman approximately since -- 27 years
17 as a journeymen.

18 Q Were you an apprentice?

19 A Yes.

20 Q When did you begin your apprenticeship?

21 A Approximately 1941.

22 Q How long did your apprenticeship last?

23 A Four years, nine months.

24 Q Did someone propose you for membership in
25 Local 28 to the apprenticeship program?

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Carlough-direct

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A Yes.

Q Who was that individual?

A My uncle.

Q Who is that individual? Would you state his
name?

A Walter Carlough.

Q Was he a member or is he still a member of
Local Union 28?

A No, he is deceased.

Q Was he a member of Local 28?

A Yes.

Q Do you have any other relatives in addition
to Mr. Walter Carlough that were members of Local Union 28?

A Yes.

Q Would you please state for the record who they
are?

A Edward Carlough.

Q What position, if any, does he hold?

A General president emeritus, Sheetmetal Inter-
national Association.

Q Was he ever an officer of Local Union 28?

A Yes.

Q What positions, if you know, did he hold in
Local Union 28?

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1 arjw 3

Carlough-direct

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2 A President.

3 Q During what period of time?

4 MR. BOGEN: If your Honor please, the pedigree
5 of Edward Carlough is set forth in detail in the depositions
6 and I just want to save the record. I don't know what the
7 purpose is but we will stipulate that those depositions set
8 forth honestly and completely the positions in 28 all through
9 the time including the present status as president emeritus.

10 MR. CORSI: Fine, I withdraw it on that basis.

11 Q Would you indicate what other relatives if any
12 you have in Local Union 28 or have had?

13 A Edward J. Carlough.

14 Q What position did --

15 A My cousin. He was an apprentice with me in
16 Local 28. He is now an official in the International
17 Association.

18 Q What position did he hold?

19 A General president.

20 Q Do you have any other relatives?

21 A My cousin, Robert Hagen, organizer. My uncle
22 Francis Weigel and -- how close do you want to go with
23 relatives?

24 Q Blood or marriage?

25 A I have Angelo Harkness, and Michael Harkness,

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1 arjw 4

Carlough-direct

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2 like distant cousins I would say. That is my relatives,
3 close enough that I can think of.

4 Q Thank you.

5 What is your educational background?

6 A High school graduate. I have a teacher's
7 license in the Board of Education for the City of New York.

8 Q What area of specialization, if any, is that
9 license held in?

10 A The license is issued by the State of New York
11 in sheetmetal.

12 Q What is your present occupation?

13 A Sheetmetal worker.

14 Q In addition to a sheetmetal worker, are you
15 employed by a sheetmetal firm in a signed agreement with
16 Local Union 28?

17 A Yes.

18 Q What firm?

19 A Triangle Sheetmetal Work.

20 Q What type of work do you do for Triangle?

21 A I am a draftsman.

22 Q In addition to your affiliation with Triangle,
23 do you have any other type of employment or business
24 activity?

25 A Yes.

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1 JKjw 1 Carlough-direct 834

2 Q What classification, if any, does the Blowpipe

3 Division of Local 400 have? There is testimony in the

4 record, and you have just indicated, the Local 28 is a

5 Building Trades local.

6 A Yes.

7 Q What classification, if any, does the Blowpipe

8 Division of Local 400 carry?

9 A Building Trades.

10 Q Mr. Carlough, would you describe the circum-

11 stances surrounding your affiliation with the apprentice

12 program of Local 400 Blowpipe Division, and the circum-

13 stances surrounding the time that you came to be employed

14 by the apprentice program?

15 A It came to my knowledge that they needed an

16 apprentice coordinator in Local 400, the Joint Committee.

17 I submitted an application around January or February of

18 '66. I did some preliminary reports for them and I was

19 hired in May of 1966 by the Joint Committee.

20 Q How did it come to your attention that they

21 were looking for a coordinator?

22 A My cousin told me they were.

23 Q Who is?

24 A Robert Hagen.

25 Q Now, you made reference to a Joint Apprenticeship

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Carlough-direct

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Committee. Could you describe the structure of that committee to the best of your knowledge?

A It is composed of four employers in signed agreement with Local 400 and four members of the union appointed by the President of the union.

Q Just so that the record is clear, we are now just talking about the employers in signed agreement with the Blowpipe segment?

A That is correct. Excuse me -- we conducted training programs in the rest of 400 but not apprenticeship training programs.

Q Once you are interviewed and made an offer for the job of coordinator, what if anything did you next do?

A We had the program registered with the United States Department of Labor, Bureau of Apprenticeship and Training. We drew up our standards and submitted them, and then we became certified as a registered apprenticeship program.

We then applied to the Board of Education for 144 hours of related training which they provide us.

We set up funding and we then took the apprentices and made a pool and put them in different terms.

Q Let's focus on this last portion of your testimony for a second.

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How large was the apprentice program when it was first organized?

A The first semester was very large because we didn't who knew were apprentices so there were 120 applied as apprentices for the apprentice program.

Q Now, did this include all the men that were working as sheetmetal mechanics in the shops?

A In the blowpipe, whoever was working in Local 400 Blowpipe could apply. A letter was sent to all the members saying that under the terms of the collective bargaining agreement we were going to establish an apprentice program and if you were interested in participating, come to this meeting.

Q Well, you say that there were approximately 120 apprentices at that time?

A Applied, no, they applied for apprentice, in other words. The first year was a very heavy -- 120 people applied to go into the apprentice program, that's correct.

Q Were there any other men that were mechanics or journeymen in those shops that did not apply?

A Yes.

Q Roughly, how many men would that have included?

A I couldn't tell you how many did not apply.

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Carlough-direct

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Q You indicated that there is this pool of 120 men.

A Approximately.

Q Was a determination made as to what position in the apprentice program they would hold?

A Yes.

Q And how was that determination made?

A The Committee took what they were earning per hour as a ratio of what a mechanic would make and we graded them based on their wages. Certain people would get like a year of training, some two years, some three years, and some the full four. That's why there was such a heavy influx the first year. We lost maybe 40 of them the first year as mechanics.

Q And you were involved in making those determinations?

A With the Committee. No, the Committee made the determination. I was at the meetings where we made the determinations.

Q During the time that the program was being organized, did you ever have occasion to visit the shops, the blowpipe shops?

A Yes.

Q You have testified that approximately 120 men

2 were in the apprentice program when it was organized.

3 Do you know what the racial composition of that
4 group was?

5 A Do I know it? No.

6 Q Can you estimate it?

7 A Yes.

8 Q And would you give us the racial composition
9 to the best of your knowledge or your estimation at that
10 time?

11 A What do you mean, like black, you want a
12 breakdown or what?

13 Q Yes, please.

14 A I would say 50 to 60 percent were either black
15 or Hispanics at the time we had the program. I would say
16 40 percent were black and 20 percent were Hispanic as
17 a ballpark number, you know.

18 Q Do you know approximately how large the blowpipe
19 division, including apprentices and mechanics, how large
20 that was at the time that the blowpipe division was organized
21 and you were involved?

22 A Approximately 365 members.

23 Q Do you know whether, again, at that time, there
24 were any general membership meetings held of the Blowpipe
25 Division?

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2 A General membership?

3 Q Of all the members of the Blowpipe Division.

4 A I would never attend meetings. I wouldn't
5 know. I have nothing to do with the membership meetings
6 or the affairs of 400 other than apprentices.7 Q You indicated there were approximately 365
8 men in the union.

9 A That's the record I had, about that, yes.

10 Q Can you estimate or do you know what the racial
11 composition of that group was?

12 A The same as the apprentices, about 50, 60 percent.

13 Q What is the approximate size of the Blowpipe
14 Division apprentice program now?

15 A Now we have 15.

16 Q And do you know what the racial composition
17 of that group is or estimation?18 A 40 percent minorities, maybe -- it dropped,
19 naturally, as the things dropped the ratio dropped.20 Q The apprentice program has been in existence
21 since about '66?

22 A Since 1966, June of '66. It was registered.

23 Q Has there been an average size of the program
24 You have indicated at some point that it was 120. Now we
25 are at 15. What has been the average size, if any?

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1 A 40.

2 Q And when it has been at that size, what has
3 been the racial composition, to the best of your knowledge
4 and estimation?
5

6 A We never kept records, but I would always say
7 it's approximately 40 to 60 percent in that category.

8 Q In addition to make determinations with the
9 Committee as to where an individual would fall in the
10 apprentice program, did you have any other duties or respon-
11 sibilities at that time?

12 A Well, my job as coordinator was to keep the
13 records and the minutes of the JAC, to finance it. I was
14 given charge of the finances of the JAC. Purchased all
15 the materials.

16 And I act in their behalf, between the monthly
17 meetings, meeting with the government agencies and trainee
18 programs, and so forth, on their behalf in the interim.

19 Q How long is the apprentice program, Local 400
20 Blowpipe Division?

21 A Four years.

22 Q And can you describe that program for us?

23 A It's a registered apprenticeship program and
24 every six months they go to school two nights a week, and
25 they appear before the Committee. We furnish the Committee

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with their school work and their records and every six months they are given a progression raise to the journeymen's rate which takes four years and they are taught the trade of the blowpipe industry.

Q You indicated that every six months they are given a progression rate.

A That's right, under the terms of the collective bargaining agreement, if they qualify.

Q You indicated that the program is four years in length. Is it broken up or is it segmented?

A Every six months they get a raise. They start with 45 percent, first term apprentices, and they get a progression raise of 5 percent up until 80 percent, which takes four years.

Q Can you describe the curriculum or course of instruction that is used in the blowpipe division apprentice program?

A Well, they work under the supervision of a mechanic during the day, and two nights they attend school; related instructions under the supervision of the teacher; and they just learn the blowpipe trade progressively, you know, they learn different things about the trade.

Q Did you set up the course of study or the curriculum that is used in the blowpipe division apprentice

1
2 program?

3 A Yes, I did.

4 Q Would you please describe the circumstances
5 surrounding the gradation of that curriculum, the course
6 of instructions?

7 A We applied to the Board of Education for
8 related instruction and they provide us with a classroom
9 facility.

10 Q Where is that, sir?

11 A We first went to Brooklyn Tech. We are now
12 using Queens Evening Trade. We used two schools. They
13 provide us with the -- they pay for the teacher, they
14 pay for some equipment. The Committee provides the other
15 equipment.

16 Q In the course of setting up the program, did
17 you have any communications or did you contact the Inter-
18 national?

19 A The only thing I did with the International,
20 was notify them that we had a registered program, you know,
21 by letter, that we had registered our program, and then I
22 asked them anything they might have to give me that I could
23 use, to send me, and it was free.

24 Q Did they respond to you, sir?

25 A Yes, I believe they did.

2 Q And what was the nature of their response?

3 A Well, the recommended I use, you know, certain
4 pamphlets that they put out, and they sent me their stand-
5 ards for the sheetmetal industry to be incorporated. They
6 made certain recommendations.

7 Q And what, if anything, did you do with those
8 recommendations?

9 A Well, we adopted the standards, most of the
10 standards that they had, that they recommended.

11 Q I am showing you Exhibit 14 and Exhibit 15
12 in evidence.

13 Could you briefly review those? 14 is a
14 letter from Mr. Thomas Carlough to Mr. David S. Turner,
15 general secretary-treasurer of the International Association,
16 and that is dated August 2, 1966.

17 Exhibit 15 is a letter from David Turner to
18 Mr. Thomas Carlough, dated August 11, 1966.

19 A Yes.

20 endb

21 end t

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2 Q Is Exhibit 14 the communication that you referred

3 to?

4 A Yes.

5 Q And 15 is the response from the International?

6 A That is right.

7 Q Prior to the time that you became affiliated

8 with the Local 400 Blowpipe Division, to your knowledge did

9 Local 400 have an apprentice program?

10 A They did not.

11 Q Do you know why they did not?

12 A Yes.

13 Q What was that?

14 A They were a production local.

15 Q I believe you testified that there is a course

16 of instruction which includes some classroom two nights a

17 week at Queens, at one point was at Brooklyn.

18 A That is the State law that requires 144 hours

19 of related education for apprentice training to be registered.

20 Q Are attendance records kept?

21 A Yes.

22 Q Is attendance mandatory?

23 A Yes.

24 Q I believe you also indicated that the apprentice,

25 you testified an apprentice worked under the supervision of

[Plaintiffs' Exhibit 105 for identification
received in evidence.]

Q Mr. Carlough, do you know four individuals by
the name of Roosevelt Mitchell, Leroy Floyd, Henry Woods
and Roosevelt Johnson?

A Yes, I do.

Q Would you describe the circumstances under which
you first met these individuals?

A I met one in the shop as a journeyman.

Q Who, do you remember?

A Roosevelt Johnson I met in the shop. He was a
journeyman and the other three were in the apprentice
program. I met them first in the school and then in the
shop.

Q That is the 400 Apprentice Program?

A Yes, the 400.

Q Are they still members or apprentices of the Local
400 Blowpipe Division?

A No.

Q Do you know under what circumstances they left
the Blowpipe Division?

A They left the Local 400 to take the test in Local
28.

2 Q Do you know approximately when that was?

3 A I don't know; about four, five years. I have
4 no recollection. I'd say it's about four years ago, three,
5 four years. I don't remember.

6 Q You say that they took a test for Local 28.
7 What type of test was that, if you know?

8 A A journeymen.

9 Q At the time that they took the test -- you
10 have indicated that three of them at some point were
11 apprentices. At the time they took the test, what was
12 their status in the 400 program?

13 A One was a journeyman, as I said, two were
14 active, and I think LeRoy Floyd had dropped out temporarily
15 out the program, he had dropped out of the apprentice
16 program.

17 Q But they had not yet graduated?

18 A Two were in the apprentice program; Henry Woods
19 and Roosevelt Mitchell were in at the time.

20 Q Do you know what result they achieved or did
21 not achieve on that journeymen's test?

22 A Yes.

23 Q What was that, sir?

24 A They passed the test and they are now members
25 of Local 28.

1 Q With respect to Mr. Mitchell, Mr. Woods, Mr.
2
3 Floyd, which I believe you indicated at least at some
4 point they were apprentices in the 400 program, during
5 that time that they were apprentices, did you ever have
6 occasion to review their work?

7 A Yes.

8 Q Did you ever have occasion to compare their
9 work with other apprentices in the program?

10 A Yes.

11 Q Based upon that comparison, did you or do you
12 have an opinion with respect to their work?

13 A Yes.

14 Q And what is that opinion, sir?

15 A Roosevelt Mitchell was very good in layout,
16 exceptionally good layout man, recommended him for skips;
17 we skipped him in Local 400. He was pretty good.

18 Henry Woods was an average sheetmetal man,
19 conscientious.

20 LeRoy Floyd, I never thought much of him as
21 a worker. As a matter of fact, I recommended holding back
22 one year, he wasn't too good, wasn't conscientious, I thought,
23 you know

24 Q Do you know what the race or ethnic background
25 is of these three individuals and Mr. Johnson?

in but I think the whole year we took in over one hundred.

Q Was that determined in negotiations between the employers and the union?

A No, they had a contract in effect.

Q That is the collective bargaining agreement, right?

A Right.

Q The collective bargaining agreement provided how many apprentices to take in and when to take them in, isn't that a fact?

A That is right.

Q Are you familiar with the Local 28 contract?

A Somewhat, yes.

Q And the provisions in the 28 contract, whatever we have here, there are three or four in evidence already with respect to when and how, would you say that was the same as the 400 contract with respect to determining what number to take in?

A No, they are not the same.

Q Now, in 1966 you said you had 120 people in the program.

A The first year, yes.

Q How many of those people remained in the program, if you know?

2 A Until the present?

3 Q Through the program. 1966, you say it is a
4 four-year program, from 1966 to 1970.

5 A The first year, 1966, better than 50% only
6 stayed in one year or less because they were that high
7 in the wage scale.

8 Q In addition the ones who completed the program,
9 how many dropped out of the program, if you know?

10 A I would say about 30% dropped out the very first
11 year.

12 Q With respect to 1967 how many dropped out in 1967?

13 A Very few.

14 Q But the percentage of those that came in some
15 dropped out?

16 A Right.

17 Q 1968 you say you took fifty and thought that
18 maybe it went as high as one hundred?

19 A In two shots, about a hundred altogether.

20 Q How many dropped out of the program out of the
21 fifty you took?

22 A Out of one hundred about sixty dropped out.

23 Q The first year?

24 A That is correct.

25 Q And after the first year how many dropped out, if

any?

A The ones that stayed, stayed. Whoever stayed, the ratio maybe 10% dropped out.

Q Another 10% dropped out so that is up to sixty at that point.

By the way, from 1968 to the present about 70% of the people drop out, is that a fair statement?

A No, they got laid off.

Q And then dropped out?

A The period you are discussing I would say about fifty or sixty percent dropped out in that 1968 period.

Q With respect to the fifty that you took in in two shots totalling 100, what was the source of those applicants and apprentices?

A The State referred them all.

Q Now, did you advertise with respect to applications being accepted or considered?

A No.

Q Did you notify the State Human Rights Commission?

A No.

Q Did you notify the City Human Rights Commission?

A I think we had a joint meeting with them. We got all of the people under a Manpower Program.

Q That was a manpower grant, was it?

1
2 A Yes.

3 Q By the Federal Government?

4 A That is right.

5 Q That paid for certain special training for
6 disadvantaged people?

7 A That is right.

8 Q At that time did you notify any of the minority
9 groups that you were accepting applicants?

10 A Yes, sir, we did.

11 Q As part of the special program?

12 A It wasn't a special program they were brought into.
13 They gave a full year credit against their apprenticeship.
14 It was not a special program per se.

15 Q With respect to 1969 how many apprentices, if
16 any, did you bring into the program?

17 A 1969?

18 Q 1969.

19 A I would say about ten or fifteen, sixteen maybe.

20 Q These ten or fifteen were not related to any
21 special funding program, were they?

22 A No, not the 1969 and 1970.

23 Q With respect to 1969, did you notify any of the
24 minority groups about accepting applications?

25 A The Workers Defense League, we notified them.

to taper off.

Q Let us see if we can put in --

A We lost a major shop who hired a tremendous amount of people that went under.

Q At that time as a consequence were there layoffs in the blowpipe industry?

A We lost a whole shop.

Q How many journeymen were laid off?

A 35, 40.

Q How many apprentices?

A 25 I would say.

Q When did this shutdown take place?

A In 1970, 1971 it started to taper off.

Q If we can bring you back and maybe refresh your recollection as to numbers, in 1974, the past calendar year --

A Yes.

Q -- how many apprentices, if any were made or became part of the program, if you know?

A One or two maybe; I don't know.

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A F T E R N O O N S E S S I O N

[2:00 p.m.]

MR. CORSI: At this time we will call Mr. Louis
Commarato.

LOUIS COMMARATO, called as a witness
on behalf of plaintiff, being first duly sworn, was
examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORSI:

Q Will you state your home address, please?

A 24 Memo Street, Staten Island.

Q What is your occupation, sir?

A President and Business Manager of Local 400.

Q Is Local 400 affiliated with the International
Association?

A It is.

MR. BOGEN: At this time I have a similar
objection to interpose as when Mr. Carlough took the stand
with respect to any testimony as to 400.

I think your Honor's ruling at that time was that
you would take that matter subject to connection. I assume
the President of Local 400 is being examined with respect
to the activities of 400 and I interpose the same objection
at this time for the same purpose.

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work history, what the course of your employment throughout the years was?

A At one time I was foreman-supervisor in a production shop and was also a president of a Federal Local.

Q Did that Federal Local have a designation or a name?

A Yes, 22045, Sheetmetal Box Production Workers, something like that.

Q When did Local Union 400 come into existence?

A About 1952 or 1953.

Q At that time who was president of Local 400?

A I was.

Q When Local 400 was organized, what, if any designation or classification was given to it?

A Local 400 wasn't organized. Local 400 associated itself with the International.

Local 22045 was organized. Then we decided we needed some prestige, some dignity, some assurance, because of conditions and we were approached to become part of the International Association and we did become part of the International Association.

We were given the tital of Local 400, Sheetmetal Workers, Production Workers.

Q At the time that the Federal union became affiliated with the International, that was approximately 1952 or 1953?

A Right.

Q Can you estimate or do you know what percentage of the membership -- can you describe the racial composition of the membership?

A Before or after?

Q Just at the time that you became affiliated with the International.

A I would say we were about 70 - 30, something like that.

Q What was the 70?

A 70 of the minority and 30 of the group, whites, Chinese.

Q When you say minorities, what would that be?

A Spanish speaking and colored.

Q There is evidence and testimony I believe in mid-1960 the Blowpipe Division of Local 400 was organized.

A Around 1965.

1 Q What designation, if any, was the blowpipe
2
3 division given?

4 A Division of Local 400.

5 Q Would you describe for us the circumstances
6 to the best of your knowledge, surrounding the organization
7 of the blowpipe division?

8 A Basically, we did most of our own organization,
9 but we know that the blowpipe division was ripe for organi-
10 zing; we had approached him and we were dickering back and
11 forth and finally were able to secure enough cards to go
12 in and sit down with the two major companies which was
13 MBC, Manhattan Blower and Rotodyne, at that time and there
14 was some objection by the Local 28 at that time, by Mel
15 Farrell, who was the president.

16 Q What was the nature of that objection, if you
17 know?

18 A To be honest with you, I don't know why he
19 objected so strenuously, but in the final analysis, I
20 think the International indicated to him -- no, the reason
21 why he objected so strenuously, that 28 primarily was in
22 the air conditioning field, and that the blowpipe division
23 was not geared to do any air conditioning, and we would
24 have to go through a whole training program, most of the
25 employees of the blowpipe division were in their late

2 forties, some fifties, and they were exactly maybe too
3 old to go to an apprenticeship school, but whatever the
4 objection was the International made it clear to 28,
5 either they took them or they would be given to Local 400
6 as a division of 400.

7 Q When the division was organized and it became
8 part of 400, did the individuals who became part of that
9 division, did they receive -- what, if any designation
10 did they receive?

11 A When you say "designation" what do you mean
12 by "designation"?

13 Q Let me try it again. I take it that the
14 individuals that were members of Local 400 prior to the
15 organization of the blowpipe, what designation, if any,
16 did they have?

17 A Production workers?

18 Q Is that the designation that they had? Were
19 they production workers?

20 A Are you referring to the blowpipe or to my
21 other division?

22 Q Prior to the blowpipe?

23 A Yes. Designated as production workers.

24 Q When the blowpipe division was organized,
25 what designation did the individuals who were members of

2 blowpipe division get or have?

3 A They got a designation that they were a division,
4 blowpipe division of Local 400. That was their designation.

5 Q Does a member of the blowpipe division receive
6 or have a card, a union card?

7 A Yes.

8 Q Could you describe that card for us, please?

9 A Are you referring to the card itself, or are
10 you referring to a receipt? I want to make it clear.

11 Q Would you describe the receipt for me, please?

12 A The receipt that the blowpipe division has,
13 the members, is an official receipt carried by all of the
14 tradesmen.

15 Q Does a production worker have a receipt?

16 A Yes.

17 Q Is that receipt the same receipt that the
18 blowpipe worker has?

19 A No.

20 Q What, if any differences, are there between
21 the two receipts?

22 A Well, production workers you must understand
23 are unskilled, semi-skilled and some are in the skilled
24 categories.

25 The blowpipe are primarily, because of the

2 apprenticeship program, are primarily in the skilled cate-
3 gory, which are called mechanics.

4 The production workers cannot go into the
5 field because of their background and their skills.

6 The blowpipe can go into the field for installa-
7 tion because of their skills. So they erect or they
8 install whatever they manufacture.

9 Q Mr. Commarato, I am showing you Exhibit 9
10 in evidence, which is a letter addressed to Mr. David
11 S. Turner, from Mr. Louis Commarato, dated October 7,
12 1965.

13 A That's right.

14 Q Would you explain the nature of this request
15 that you made to Mr. Turner?

16 A For the receipt books?

17 Q Yes, please.

18 A The reason why we requested --

19 Q What types of receipt books did you ask for?

20 A Building and construction, because in 1965 we
21 were classified as a building and construction, the blow-
22 pipe, building and construction division, our receipts
23 had to coincide with the building and construction and
24 journeymen's receipts that existed throughout the entire
25 International Construction Field.

1
2 Q Do production workers get that receipt, the
3 official receipt?

4 A No, they get -- they get an official production
5 receipt.

6 Q Mr. Commarato, I am showing you Exhibit 7
7 in evidence, which is a copy of the letter addressed to
8 Mr. Louis Commarato from the General Secretary-Treasurer
9 of the International.

10 A It's a poor copy, pal.

11 Q Let me see if I can get another copy.

12 A Better get another machine.

13 (Pause)

14 Q Did you receive this letter?

15 A Did I receive it? I guess so. I must have a
16 copy of it in the office. Did you get this out of my
17 office?

18 Q This was part of Mr. Edward Carlough's depo-
19 sition.

20 A Did you relate to the differential in the
21 initiation fee or something like that, one page 15, one
22 page 10; is that what you are referring to?

23 Q I am referring to the statement, "The members
24 employed in the blowpipe shops are to be classified as
25 building trades members with official receipts issued from

2 the regular receipt book."

3 A Right.

4 Q Why was that?

5 A Because, like I says, all the construction,
6 all of the members in the International who are in the
7 construction field carry official receipts. They are
8 classified as building and construction tradesmen.

9 Q At the timethat the blowpipe division was
10 organized, approximately how many individuals were in the
11 division?

12 A At that time? I figure about 250, 260, some-
13 thing like that.

14 Q Do you know or can you estimate the racial
15 composition of that group?

16 A At that time? Or at the present time?

17 Q At that time.

18 A I figure about 75-25, something like that.

19 Q 75 referring to?

20 A Blacks and Spanish people.

21 Q Approximately how many individuals are presently
22 in the blowpipe division?

23 A Oh, boy! I think if we are lucky we got 125
24 right now, if we got that much.

25 Q Can you estimate or do you know what the racial

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Commarato - direct

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2 with respect to the agreement worked out --

3 MR. BOGEN: We have had this twice with Mr.
4 Adams. I don't know what Mr. Commarato is referring to
5 now. I don't think it is proper for Mr. Corsi now to say
6 or explain what it is. I object to it and ask that Mr.
7 Corsi's statement be stricken.

8 THE COURT: It may be struck. The witness'
9 answer might stand.

10 Q In addition have you had any other contacts with
11 Local 28, telephone conversations or contacts with Local 28?

12 A No.

13 Q During the time since the organization of the
14 blowpipe shops has the president or business agent of Local
15 28 contacted you and requested mechanics or apprentices
16 to work on permit in Local 28 shops?

17 A No.

18 Q To your knowledge has any officer or agent of
19 Local 28 contacted any business agent, if there are any
20 in addition to yourself, of Local 400 to ask for men
21 to work on permit?

22 A No.

23 Q Mr. Commarato, getting back to the discussion,
24 that when a negotiating session that you participated in
25 with Mr. Farrell and Mr. Roberts and I believe you may have

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at that time. There was a test being given.

Q Did you receive a communication from Local 28 with respect to the test, is that correct?

A That is right.

Q At that time they invited or requested that you invite members of Local 400 take that test?

A You didn't have to invite them, they just ran.

Q Did you --

A But I did receive a communication, yes.

Q In substance the communication advised of a test and asked you to communicate this to your members?

A Right.

Q Did you in fact communicate that letter?

A Not all the way. I didn't push it.

Q But you advised them?

A I told them but I didn't push it.

Q Any restrictions placed on any of the members of Local 400 including the production with respect to race, color or national origin?

A No. I wish there was.

Q Now, with respect to -- you mentioned 1968 or 1969. If I suggested to you there were two tests given by Local 28 for journeymen, would that refresh your recollection when you received it and how many communications

duct, if you know?

MR. BOGEN: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Commarrato, I believe in your cross-examination by Mr. Bogen you indicated that when one or more journeymen tests were given by Local Union 28, the members of Local 400 Blowpipe Division -- quote -- ran to take the test.

Is that your word?

A Yes.

Q On what do you base that statement?

A Well, you have to understand, going back ten years ago, when we first organized them, a journeyman in the blowpipe, a mechanic, was getting something like \$2.25 an hour, and at that time I think maybe Local 28 -- this is going back ten years now -- was getting maybe about five or six dollars an hour or maybe four dollars an hour, which was a lot more money than we were making.

Now you go back maybe six years ago, I think they were still making somewhere in the neighborhood of eight, nine dollars an hour, and my guys were only making about \$3.75 an hour.

Now you come to the present time, my people are making in the area between \$7.50 and \$8 an hour. That's without the fringes. The fringes are about 40%, and Local

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2 28 now is making somewhere, with their fringes, somewhere
3 in the neighborhood of \$13, \$12 now, so the gap has
4 become close. The only difference is this: In my
5 agreement I have what you call job security. I got
6 seniority. And Local 28 has no seniority.

7 In other words, you could be there forty years,
8 along comes some young kid or somebody and he has got your
9 job. It doesn't happen in my agreement.

10 So when it came to the transfers or the tests,

11 some did want to go, but the others said, no way, we
12 are staying here, because we're guaranteed practically
13 50 or 52 weeks out of the year.

6.2 14 Q The individuals that took or passed the test
15 -- and/or passed the test, did you have any discussions with
16 them concerning this?

17 A Oh, I spoke to the ones about -- I think it was
18 69, four, five years ago, something like that, and told them
19 that I wouldn't stand in their way of progress, but I
20 did realize the fact that there was a lot more monies
21 concerned, but I sure hated to lose them, and they were
22 trained under our program, or some were already mechanics.
23 But by the same token, I told them that if they didn't
24 make it, they can always come back, and even if they did
25 make it and needed the job, they could always come back.

1
2 B: I did talk to them, same as I talked to them
3 when they were going to transfer.

4 Q During your cross examination, Mr. Bogen read
5 to you part of your deposition on Pages 7 and 8, indicating
6 that you had some prior contact with and had in signed
7 agreement blowpipe shops prior to the organizational effort
8 in the mid-sixties.

9 Let me read to you the portion of the examination.

10 MR. BOGEN: What page is that?

11 MR. CORSI: On Page 7.

12 MR. BOGEN: Thank you.

13 Q "A Well, we were organizing. In fact, we
14 organized everything and anything, but we stayed clear of
15 it for the simple reason we figured the Teamsters were near
16 it and the carpenters and it would fit within our scope
17 of manufacture, and we started organizing, picked up a
18 little shop here and there, and were able to get the big
19 shop, MBC.

20 "Q You initially had been staying away from
21 these blowpipe shops?

22 "A Only because we were so busy and we were
23 limiting our expenses and we figured it would cost us quite
24 a few dollars if we went to an organization campaign to
25 get the blowpipe industry in because they have been in

1 business, I imagine, 30, 40 years and were set in their
2 ways. We had touched them from time to time trying to
3 make inroads, but then we were told we could go in and
4 if there were any finances to be needed, I imagine the
5 REgional Director would make arrangements with the Inter-
6 national."
7

8 That is a portion of the deposition that Mr.
9 Bogen read to you before.

10 Could you explain what you mean when you said,
11 "but then we were told we could go in"?

12 Who, if anyone, told you that you could go in?

13 A The REgional Director, Alan Roberts.

14 Q What were the facts and circumstances surrounding
15 Mr. Roberts telling you that you could go in or Local 400
16 could go in?

17 A Well, if you know the background of the Internation-
18 al, we as a production local, we have a small dues struc-
19 ture and part of our dues structure has to be paid on each
20 individual as a per cap. It didn't leave us too much and
21 most of our organization was done by us. Sometimes we got
22 the assistance of the International.

23 Now, if we tackled a shop like Manhattan Blower
24 and we knew that there had been inroads made by the
25 Teamsters and the Carpenters but the members themselves,

and I imagine the employers didn't want the Teamsters or carpenters in there either, so we spoke to the Regional director of organization and told him if we ran into a problem -- because if the carpenters or the teamsters got them, there would be a problem with sheetmetal.

Q Why would there be a problem?

A I imagine jurisdictional.

Q What do you mean, jurisdictional?

A Well, there would be teamsters doing sheetmetal work which primarily was not their field.

Q Whose field was it?

A The sheetmetal field.

Q Would it have been the pre-existing jurisdiction of Local 400?

A No.

Q Do you know whose jurisdiction it would have been?

A Whose jurisdiction that there would have been?

Q Yes.

A If we got it?

Q No; if the Teamsters or the carpenters had --

A It would be the sheetmetals' jurisdiction.

Q What local of the sheetmetal?

A Local 28 or Local 22, or any sheetmetal local in the country. Then the blowpipe is not restricted to

the New York area. Blowpipe has got the whole 52 states. Our shops have done work in Chicago, in Tampa, Florida.

Q Let me try and clarify a point.

If the teamsters had organized or the carpenters had organized blowpipe, would it have infringed on the jurisdiction of Local 400 production?

A No, of course no.

Q But it would have infringed upon the jurisdiction of the sheetmetal industry?

A I imagine it would.

Q Would it have infringed upon the jurisdiction of any sheetmetal local union in the New York City area?

MR. BOGEN: Objection, your Honor. It is too speculative. The first two questions I didn't mind. I thought we were moving on.

THE COURT: The question has been asked and answered.

MR. CORSI: I'll withdraw it.

Q Mr. Commarato, you also testified in response to Mr. Bogen's cross-examination that the work done in a blowpipe shop is routine; is that a correct characterization of your testimony?

A Yes.

Q Could you describe for us or explain to me what

1 you mean by routine?

2 A Well, they do a lot of what you call dust
3 collectors and cyclones. The majority of their work is
4 in cyclones, dust collectors, degreasing tanks, exhausts,
5 hoods, stacks. Primarily this is what they deal in,
6 replacement of certain parts.
7

8 Q When you say that it is routine -- well, I am
9 still not sure that I am clear on what you mean by routine.

10 A When you have made one cyclone you have made
11 them all.

12 Q Are all cyclones that are made, if you know,
13 made of the same dimensions?

14 A Oh, no. Made smaller, larger. Just that the
15 angles change. They become smaller and larger.

16 Q Does the blowpipe worker fabricate and install
17 these cyclone systems that are of varying dimensions?

18 A Yes.

19 Q And how then -- and I believe you have tried to
20 draw, in your prior testimony you tried to draw a distinc-
21 tion between the production work from the blowpipe work.

22 Now, can you be more specific with respect to
23 that distinction that you have drawn?

24 MR. BOGEN: Objection, your Honor.

25 A Between production and blowpipe?

2 THE COURT: Let him answer.

3 A Well, if you are familiar with production. In
4 production they take a large coil of steel and they run
5 it out of a roller into a machine and they set the button
6 and it becomes repetitive and all the individual does is
7 look at it and watch to make sure that the machine doesn't
8 jam. And occasionally he will replace a coil of steel.

9 Or he will be given a stack of steel of maybe
10 two, three tons and put on a shear and chopped.

11 Q Same dimensions?

12 A Same dimensions, all the way down the line.

13 Or you may be working on a rollout line where
14 they are making rollout cabinets. Someone is assembling
15 suspensions onto a drawer and another is putting them
16 over and another is sliding them in, and they are rolling
17 down.

18 Or you may have an individual that's hanging
19 on a conveyor line. It's a belt line that leads to a
20 spray booth.

21 This is all done in production. It's all
22 repetitive.

23 Q And now, would you describe the work as best
24 you can that is done in the blowpipe shop and explain to
25 us what differences there are, if any, between what is

6.3

done there and --

A In a blowpipe shop, if you are making elbows, you give the man a job, and he makes elbows until they come out his ears. If he is making long round pipe, he gets on a roller and rolls pipe. He may be now cutting down for cyclones. He may be using a handsmith to make a circular cut. So he will be given that there job. And someone else will be rolling it. Someone else will be cutting it. Someone will be bending it.

They are more or less specialized in their field.

Q They are specialized in their field? Can you explain that?

A Yes. Each one has got a certain job to do. Then it's all put together. In other words, all the components are manufactured and then the components are coordinated and put together and then the thing goes out.

Q Mr. Cammarato, on direct testimony you indicated that Mr. Farrell was involved in one session with you concerning Schedule A. On cross there seems to be a difference as to who participated in that discussion. Can you explain?

A Well, when he read it to me, this is the way it was I said it the first time, and when I said it before, I just forgot who sat there. But when he read it out

2 of the thing, I agreed that's what I had said in the
3 deposition, so it was a mistake on my part.

4 MR. CORSI: I have no further questions.

5 MS. GROSS: No questions.

6 RECROSS-EXAMINATION

7 BY MR. TUMINARO:

8 Q Mr. Commarato, in response to Mr. Corsi you
9 mentioned that there was a time when the Local 400 men
10 were earning something like 2.25 an hour, is that correct?

11 A Yes.

12 Q And you also stated when they were invited to
13 take the exam -- this was what year?

14 A 1969, to the best of my recollection. I think
15 it was 1969. Don't hold me to it.

16 Q I won't hold you to it.

17 A Okay, pal.

18 Q Only the best of your recollection .

19 A Right.

20 Q That in 1969, when they are invited to take the
21 exam, they ran?

22 A Right.

23 Q You also said that the gap between the wages had
24 narrowed in more recent years between the wages --

25 A As of now, yes.

Q Between Local 28 and 400. You first organized blowpipe in 1963, is that correct?

A No, '65. '65, '66, somewhere around there. I think our first agreement came in '66 or '65. It's hard to say. I would have to look up my records.

Q What were the wages of Local 400 back in 1965?

A In the production?

Q In the blowpipe.

A The blowpipe. I think they ranged from about a buck, buck seventy-five to two and a quarter, two seventy-five.

Q Were there any members of Local 400 who at that time sought to transfer to Local 28?

A No. I don't know. I don't know. You mean out of my production shop?

Q Out of either -- let's first take it one at a time.

You stated that in 1968, 1969, when they were invited to take the exam they ran.

A Right.

Q And you explained in response to Mr. Corsi that they did so because they were earning less money?

A Definitely.

Q While you hated to see them go, you didn't want

1 jksr

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EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

- v s -

71 Civ. 2877

LOCAL 28 of the SHEETMETAL WORKERS
INTERNATIONAL ASSOCIATION, et al.

January 21, 1975

[9:30 a.m.]

[Trial continued.]

MR. ADAMS: Your Honor, the Government calls
Mr. Seymour Zwerling.

SEYMOUR J. ZWERLING, called as a
witness by the plaintiff, having been first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. ADAMS:

Q Mr. Zwerling, where do you live?

A 1142 Lefferts Road, Hewlett, Long Island.

Q And what is your educational background?

A I am a graduate mechanical engineer.

Q What is your occupation, Mr. Zwerling?

A I am chairman of the board of Triangle Sheetmetal
Works and several subsidiary companies. I am also
president of the Alpine Brook Triangle Corporation.

393

Q What do Triangle and the Alpine Brook Triangle Corporation do?

A Triangle Sheetmetal Works has been a sheetmetal contracting corporation affiliated with Local 28 since 1917, continuously in business since 1917. We have several subsidiary companies. One in particular does specialty sheetmetal work, the Modulaire Corporation. That corporation does special architectural sheetmetal work. And we are in a joint venture with the competitor of ours, the Alpine Sheetmetal & Ventilating Company. And we are the contractors that are doing the sheetmetal work at the World Trade Center.

Q When you say we are the contractors doing the sheetmetal work at the World Trade Center, to which entity are you referring?

A Alpine Brook Triangle is a fifty-fifty situation, joint venture.

Q Does Alpine Brook Triangle employ sheetmetal workers?

A Yes, we do.

Q Are those sheetmetal workers a member of Local 28?

A Yes.

MR. ADAMS: For the record, I may occasionally

refer, and I expect that Mr. Zwerling will refer to Alpine Brook Triangle as ABT.

Q Does Triangle Sheetmetal employ sheetmetal workers?

A Yes.

Q And are they members of Local 28?

A The sheetmetal workers are members of Local 28 in addition to other sheetmetal locals in other jurisdictional areas.

Q Do you know, Mr. Zwerling, whether or not Triangle and ABT have a collective bargaining agreement with Local 28?

A Neither Triangle nor ABT has a direct collective bargaining agreement with Local 28. Our agreement with Local 28 is indirect by means of membership in the Sheetmetal & Air conditioning National Contractors Association of New York City, which is the signatory of the agreement.

Q Does Triangle and ABT belong to the Sheetmetal Contractors Association?

A Yes.

Q Do you have any position personally with the association?

A Yes.

Q What is that position?

1 arjw 2 Zwerling-direct

2 do?

3 A Well, it is a very broad question. Generally
4 in the context of the agreement --

5 Q Let me clarify that question perhaps, Mr.
6 Zwerling.

7 What kind of work do Alpine and Triangle
8 do?

9 A We draft, after a contract is closed, we
10 draft, coordinate, fabricate and install heating, ventilating,
11 air conditioning, exhaust systems of all types.

12 Q What are these systems made up of?

13 A Made up of sheetmetal basically. There are
14 other materials used besides sheetmetal.

15 Q What are the component parts of these systems?

16 A Are you referring to in a building?

17 Q Yes.

18 A In a building the normal heating and air
19 conditioning system starts generally with some kind of
20 fresh air intake louver. Air is then pulled through
21 filters, coils, through a fan. It is then discharged into
22 duct work, round or rectangular. There are times it passes
23 through sound traps, prior dampers that are located in the
24 duct work.

25 There are balancing dampers and volume dampers

arjw 3 Zwerling-direct

of all types through the system. The air is conveyed by rectangular or round duct work through the building in horizontal or vertical geysers to rooms where depending on the type of system it may go through secondary pressure reduction and ultimately into an air outlet into the room. That is the way it is supplied.

The return is a similar type of situation on return and exhaust air; only the reverse process.

Q Directing your attention to duct work, Mr. Zwerling, what kinds of duct work is done in air conditioning, heating and ventilating work?

A We manufacture rectangular which includes square, round, oval duct work of all types of material, sheetmetal primarily, out of galvanized iron.

The construction methods vary with the specifications and pressure requirements of the systems.

Q Mr. Zwerling, I believe you stated you have been connected full-time with the sheetmetal industry in New York since World War II.

Do you know if there have been any changes that have taken place in the heating, ventilating and air conditioning field since your full-time connection with the sheetmetal industry?

A Yes.

arjw 4

Zwerling-direct

Q What kind of changes have taken place?

A Well, the industry has grown in sophistication, techniques, increased costs have forced changes in construction methods.

I remember initially air conditioning systems that were installed years ago, one that I was involved in for a theatre. In this particular case they had an ice burker on a shoot on the sidewalk to slide cakes of ice down into a basement, into a room and passed air through it and that was the basic air conditioning.

Today, in the early '40s primarily, most of the installations were done at that time with small air conditioning systems but primarily of heating and ventilating.

In the late 1940s -- this was all low pressure by the way -- in the late 1940s the Carrier Corporation realizing the cost of construction was going up and it was necessary to cut down substantially on the cubage requirements in a building for air conditioning, which included changes in increased lighting loads, in glass, all of these things increased the total amount of air conditioning and the amount of air required. They gradually developed over a period of time -- I don't know exactly when it was developed, the exact date -- but in the late 1940s they developed high pressure systems.

arjw 5

Zwerling-direct

1
2 These high pressure systems basically were
3 the same as the early air conditioning systems but instead
4 of using low pressure air, they went to the higher. That
5 required sealing of the duct work.

6 New problems developed, the problems with
7 acoustics because of the high velocity of the air we got
8 in this new field and new problems with the necessity to
9 eliminate the noise being introduced into the system by
10 high velocity items.

11 Initially, Carrier when they did the job
12 including their induction systems, they did the job to
13 furnish complete the equipment and all of the round pipe,
14 the casings, all of the duct work, furnish and install
15 it. This was in the early 1950s.

16 About 1955 I believe it was on the Socony
17 Vacuum Building on 42nd Street, that was the first time
18 that Carrier Corporation felt there was enough know-how
19 around in the industry to permit a contractor to install
20 the round pipe that was fabricated by them. Carrier

21 Carrier had developed for them, I believe in
22 Germany, two or three special machines that makes spiral,
23 round spiral duct work, and they were the only machines
24 in this country, they imported them and subsequently a
25 whole flood of them came in in subsequent years from

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